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COMMISSION ON STATE MANDATES

NOTICE AND AGENDA ¹

State Capitol, Room 126
Sacramento, California

September 25, 2003

9:30 A.M

I. CALL TO ORDER AND ROLL CALL

II. APPROVAL OF MINUTES (action)

Item 1 July 31, 2003

III. PROPOSED CONSENT CALENDAR (action)

Note: If there are no objections to any of the following action items designated by an asterisk (), the Executive Director will include it on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.*

IV. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

A. APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181, SUBDIVISION (c). (Note: This item is limited to appeals regarding this month's agenda items.)

Item 2 Staff Report

B. TEST CLAIMS

Item 3* *Standardized Account Code Structure*, 97-TC-17, 02-TC-14
Brentwood Union School District, Claimant
Statutes 1993, Chapter 237 et al. (SB 94)

Item 4 *Peace Officer Personnel Records: Unfounded Complaints and Discovery*, 00-TC-24, 00-TC-25, 02-TC-07, 02-TC-08
Santa Monica Community College District, Claimant²
Evidence Code Sections 1043, 1044, 1045, 1046 and 1047
Penal Code Sections 832.5, 832.7 and 832.8
Statutes 1978, Chapter 630 (SB 1436); Statutes 1982, Chapter 946 (SB 1065); Statutes 1985, Chapter 539 (AB 1112); Statutes 1988, Chapter 685 (SB 1027); Statutes 1989, Chapters 615 (AB 2222) and 693 (SB 859)
Statutes 1994, Chapter 741 (SB 2058); Statutes 1996, Chapters 220 (SB 1839) and 1108 (AB 3434); Statutes 1998, Chapter 25 (AB 1016);
Statutes 2000, Chapter 971 (AB 2559); Statutes 2002, Chapter 63 (AB 1873)

¹ This public meeting notice is available on the Internet at <http://www.csm.ca.gov>.

² This hearing will be limited to testimony, discussion, and voting on the issues pertaining to the Santa Monica Community College District, Claimant.

C. RECONSIDERATION OF STATEMENT OF DECISION

- Item 5 *Crime Victims' Domestic Violence Incident Reports*, 99-TC-08
County of Los Angeles, Claimant
Penal Code Section 13730 and Family Code Section 6228
Statutes 1984, Chapter 1609 (SB 1472)
Statutes 1995, Chapter 965 (SB 132)
Statutes 1999, Chapter 1022 (AB 403)

D. PROPOSED STATEMENTS OF DECISION – TEST CLAIMS

Note: Item 8 will be considered only if the staff recommendation for Item 4 is adopted.

- Item 6* *Postmortem Examinations: Unidentified Bodies, Human Remains*, 00-TC-18
County of Los Angeles, Claimant
Government Code Sections 27521 & 27521.1
Health and Safety Code Section 102870
Penal Code Section 14202
Statutes 2000, Chapter 284 (SB 1736)
- Item 7* *Standardized Account Code Structure*, 97-TC-17, 02-TC-14
Brentwood Union School District, Claimant
(See code sections and statutes in Item 3)
- Item 8 *Peace Officer Personnel Records: Unfounded Complaints and Discovery*,
00-TC-24, 00-TC-25, 02-TC-07, 02-TC-08
City of Hayward, Santa Monica Community College District, and County of
San Mateo, Claimants (See code sections and statutes in Item 4)

E. COURT ORDERS TO SET ASIDE PRIOR STATEMENTS OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17559, SUBDIVISION (b).

- Item 9* *Standardized Emergency Management System (SEMS)*, CSM 4506
Government Code Section 8607
Statutes 1992, Chapter 1069 (SB 1841)
California Code of Regulations, Title 19, Sections 2400-2450
Adopted on May 25, 2000, and remanded by County of Los Angeles, Superior
Court of California, Case No. BS069611 (*County of San Bernardino v.
Commission on State Mandates*)
- Item 10* *School Site Councils and Brown Act Reform*, CSM 4501 and
Portions of CSM 4469
Government Code Section 54952 and Education Code Section 35147
Statutes 1993, Chapter 1138 (SB 1140); Statutes 1994, Chapter 239 (SB 355)
Adopted on April 27, 2000, and remanded by County of Sacramento, Superior
Court of California, Case No. 00CS00866, pursuant to the opinion of the
*California Supreme Court, Department of Finance v. Commission on State
Mandates, et al* (2003) 30 Cal.4th 727.

F. PROPOSED STATEMENT OF DECISION: INCORRECT REDUCTION CLAIM

- Item 11* *Graduation Requirements – Remodeling Costs*, 01-4435-I-43
Paso Robles Joint Unified School District, Claimant
Education Code Section 51225.3
Statutes 1983, Chapter 498 (SB 813)

V. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

A. ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 12 *Mandate Reimbursement Process*, CSM-4485
Statutes 1975, Chapter 486 (AB 1375)
Statutes 1984, Chapter 1459 (SB 2337)
Statutes 2003, Chapter 157 (Budget Act of 2003)
- Item 13 *Administrative License Suspension*, 98-TC-16
City of Newport Beach, Claimant
Vehicle Code Sections 13202, 13202.3, 13352, 13353, 13353.1, 13353.2, 13353.3, 13353.4, 13353.6, 13354, 13551, 13557, 13558, 13559, 14100, 14905, 14907, 23136, 23137, 23138, 23139, 23140, 23157, 23158.2, 23158.5
As Added or Amended by Statutes 1989, Chapter 1460 (SB 1623)
Statutes 1990, Chapter 431 (SB 1150)
Statutes 1992, Chapter 1281 (AB 3580)
Statutes 1993, Chapters 899 and 1244 (SB 126)
Statutes 1994, Chapter 938 (SB 1295), and
Statutes 1997, Chapter 5 (AB 74)
- Item 14* *Pupil Promotion and Retention*, 98-TC-19
San Diego Unified School District, Claimant
Education Code Sections 37252, 37252.5, 48070 and 48070.5
Statutes of 1998, Chapters 742 and 743, et al. (AB 1626 and AB 1639)
- Item 15* *Redevelopment Agencies – Tax Disbursement Reporting*, 99-TC-06
County of Los Angeles, Claimant
Health and Safety Code Section 33672.7
Statutes 1998, Chapter 39 (SB 258)
- Item 16* *Charter Schools II*, 99-TC-03
Los Angeles County Office of Education and
San Diego Unified School District, Claimants
Education Code Sections 47605, Subdivisions (j)(1) and (k)(3), 47605.5, 47607, and 47614
Statutes 1998, Chapters 34 and 673 (AB 544 and AB 2417)

B. PROPOSED AMENDMENTS TO CONSOLIDATE PARAMETERS AND GUIDELINES

Note: Item 17 will be considered only if the staff recommendation for Item 16 is adopted.

- Item 17* Consolidation of *Charter Schools I*, CSM-4437
Education Code Section 47605, Subdivision (b), and former
Subdivisions (j)(1), (j)(2), and (j)(3)
Education Code Section 47607, Subdivisions (a) and (b)
Statutes 1992, Chapter 781 (SB 1448)
and
Charter Schools II, 99-TC-03
Los Angeles County Office of Education and
San Diego Unified School District, Claimants
(See code sections and statutes for Item 15)

C. PROPOSED AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS,
TITLE 2, DIVISION 2, CHAPTER 2.5.

- Item 18* Adoption of Proposed Amendments to Sections 1181.1, 1183.01, 1183.3,
and Proposed New Section 1189.11.

VI. STAFF REPORTS (info/action)

- Item 19 Chief Legal Counsel's Report
Recent Decisions, Litigation Calendar
- Item 20 Executive Director's Report
Budget, Workload, Legislation

VII. PUBLIC COMMENT

VIII. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE
SECTIONS 11126 and 17526. (Closed Executive Session may begin at this time or may
begin earlier on this day and reconvene at the end of the meeting.)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as
necessary and appropriate, upon the following matters pursuant to Government Code
section 11126, subdivision (e)(1);

1. *County of San Diego v. Commission on State Mandates, et al.*, Case Number
D039471, in the Appellate Court of the State of California, Fourth Appellate
District, Division 1. CSM Case No. 01-L-16 [*San Diego MIA*]
2. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number
B156870, in the Appellate Court of the State of California, Second Appellate
District. CSM Case No. 01-L-17 [*Domestic Violence*]

3. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number BS069611, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 01-L-18 [SEMS]
4. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 02CS00994, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 02-L-01 [School Bus Safety II]
5. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number S109125, in the Supreme Court of the State of California. CSM Case No. 02-L-02 [Pupil Expulsions]
6. *County of San Bernardino v. Commission on State Mandates of the State of California, et al.*, Case Number B163801, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 02-L-04 [Property Tax Administration]
7. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number C044162, in the Appellate Court of the State of California, Third Appellate District. CSM Case No. 02-L-05 [Physical Performance Tests]
8. *Palos Verdes Peninsula Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS00897, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 02-L-06. [Eastview Optional Attendance Area]
9. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 03CS01069 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-01. [Animal Adoption]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

Discussion and action, if appropriate on report from the Litigation Sub-Committee.

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526. Discussion and action, if appropriate on report from the Personnel Sub-Committee.

IX. REPORT FROM CLOSED EXECUTIVE SESSION, RECONVENE IN PUBLIC SESSION

X. ADJOURNMENT

For information, contact:

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ITEM 12

STAFF ANALYSIS PROPOSED PARAMETERS AND GUIDELINES AMENDMENT

Statutes 1975, Chapter 486
Statutes 1984, Chapter 1459
Statutes 2003, Chapter 157(Budget Act of 2003)

Mandate Reimbursement Process

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ITEM 12
STAFF ANALYSIS
PROPOSED PARAMETERS AND GUIDELINES AMENDMENT

Statutes 1975, Chapter 486
Statutes 1984, Chapter 1459
Statutes 2003, Chapter 157 (Budget Act of 2003)

Mandate Reimbursement Process

EXECUTIVE SUMMARY

The *Mandate Reimbursement Process* program allows local agencies and school districts to be reimbursed for costs incurred in preparing and presenting successful test claims to the Commission on State Mandates (Commission) and submitting reimbursement claims to the State Controller's Office (SCO). Incorrect reduction claims are considered an element of reimbursement claims.

The original parameters and guidelines for this program were adopted on November 20, 1986. Each year, the Commission amends these parameters and guidelines to incorporate the most recently enacted state budget act.¹

Staff Analysis

Commission staff prepared the proposed annual amendment of the Mandate Reimbursement Process parameters and guidelines and requested comments.² Staff made non-substantive, technical changes for purposes of consistency with recently adopted language for parameters and guidelines and deleted references to prior budget acts.

In a letter dated August 19, 2003, Spector, Middleton, Young & Minney asked if "there is legal justification for omitting Special Districts as defined in Government Code section 17520 as eligible claimants."³

Staff finds that special districts are eligible claimants as provided in parameters and guidelines Section II. Eligible Claimants. Here, eligible claimants includes any local agency as defined in Government Code section 17518, or school district as defined in Government Code section 17519, which incurs increased costs as a result of this mandate is eligible to claim reimbursement of those costs. As provided in Government Code section 17518, " 'local agency' means any city, county, *special district*, authority, or other political subdivision of the state." (Emphasis added.) Government Code section 17520 merely defines "special district."

¹ Exhibit A.

² Exhibit B.

³ Exhibit C.

Staff Recommendation

Staff recommends that the Commission adopt the proposed amended parameters and guidelines, as modified by Commission staff, beginning on page 3.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

Amended Parameters and Guidelines

Statutes 1975, Chapter 486

Statutes 1984, Chapter 1459

Statutes 2003, Chapter 1577 (Budget Act of 2003)

Mandate Reimbursement Process

[For fiscal years ~~1995-1996, 1996-1997, 1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002, and 2002-2003~~ only 2003-2004, these parameters and guidelines are amended, pursuant to the requirements of: (1) ~~provision 11 of Item 0840-001-001, and provision 1 of Item 8885-001-0001 of the Budget Act of 1995;~~ (2) ~~provision 9 of Item 0840-001-0001, and provision 1 of Item 8885-001-0001 of the Budget Act of 1996;~~ (3) ~~provision 9 of Item 0840-001-0001, and provision 1 of Item 8885-001-0001 of the Budget Act of 1997;~~ (4) ~~provision 8 of Item 0840-001-0001, and provision 1 of Item 8885-001-0001 of the Budget Act of 1998;~~ (5) ~~provision 8 of Item 0840-001-0001, and provision 1 of Item 8885-001-0001 of the Budget Act of 1999;~~ (6) ~~provision 8 of Item 0840-001-0001, and provision 1 of Item 8885-001-0001 of the Budget Act of 2000;~~ (7) ~~provision 8 of Item 0840-001-0001, and provision 1 of Item 8885-001-0001 of the Budget Act of 2001;~~ and (8) ~~provision 8 of Item 0840-001-0001, and provision 1 of Item 8885-001-0001 of the Budget Act of 2002;~~ provision 8 of Item 0840-001-0001, and provision 1 of Item 8885-001-0001 of the Budget Act of 2003 to include Appendix A.]

Mandate Reimbursement Process

Adopted: November 20, 1986

First Amendment Adopted: March 26, 1987

Second Amendment Adopted: October 26, 1995

Third Amendment Adopted: January 30, 1997

Fourth Amendment Adopted: September 25, 1997

Fifth Amendment Adopted: October 29, 1998

Sixth Amendment Adopted: September 30, 1999

Seventh Amendment Adopted: September 28, 2000

Eighth Amendment Adopted: October 25, 2001

Ninth Amendment Adopted: February 27, 2003

Tenth Amendment Adopted:

I. SUMMARY OF THE MANDATE

Statutes 1975, chapter 486, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the state. In addition, Statutes 1975, chapter 486 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Statutes 1984, chapter 1459, created the Commission on State Mandates (Commission), which replaced the Board of Control with respect to hearing mandate cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by article XIII B, section 6 of the California Constitution for state mandates under Government Code section 17552.

Together these laws establish the process by which local agencies receive reimbursement for state-mandated programs. As such, they prescribe the procedures that must be followed before mandated costs are recognized. They also dictate reimbursement activities by requiring local agencies and school districts to file claims according to instructions issued by the Controller.

On March 27, 1986, the Commission determined that local agencies and school districts incurred "costs mandated by the state" as a result of Statutes 1975, chapter 486, and Statutes 1984, chapter 1459. Specifically, the Commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program as well as to obtain reimbursement for the costs of mandated programs.

II. ELIGIBLE CLAIMANTS

Any local agency as defined in Government Code section 17518, or school district as defined in Government Code section 17519, which incurs increased costs as a result of this mandate is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

- (a) A local agency or school district may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).
- (b) A local agency or school district may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
- (c) In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between October 15 and January 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Reimbursable actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561 (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct, based upon personal knowledge.", and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

A. Scope of Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur state-mandated costs. The purpose of this test claim is to establish that local governments cannot be made financially whole unless all state mandated costs -- both direct and indirect -- are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of state-imposed mandates, all resulting costs are recoverable.

B. Reimbursable Activities

1. Test Claims

All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including those same costs of an unsuccessful test claim if an adverse Commission ruling is later reversed as a result of a court order. These activities include, but are not limited to, the following: preparing and presenting test claims,

developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions. The costs of all successful test claims are reimbursable.

Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and indirect costs.

2. Reimbursement Claims

All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local agencies and school districts. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and indirect costs.

Incorrect Reduction Claims are considered to be an element of the reimbursement process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

3. Training

a. Classes

Include the costs of classes designed to assist the claimant in identifying and correctly preparing state-required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate. (One-time activity per employee.)

b. Commission Workshops

Participation in workshops convened by the Commission is reimbursable. Such costs include, but are not limited to, salaries and benefits, transportation, and per diem. This does not include reimbursement for participation in rulemaking proceedings.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contract Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Reporting

1. Local Agencies

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services

distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the following methodologies:

- a. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
- b. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

2. School Districts

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central

governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

3. County Offices of Education

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

4. Community College Districts

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimant experiences in the same program as a direct result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, services fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

¹ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (a), and California Code of Regulations, title 2, section 1183.2.

(Continue to Appendix A)

PARAMETERS AND GUIDELINES

Statutes 1975, Chapter 486

Statutes 1984, Chapter 1459

APPENDIX A

Limitation on Reimbursement for Independent Contractor Costs During Fiscal Years ~~1995-1996, 1996-1997, 1997-1998, 1998-1999, 1999-2000, 2000-2001,~~ ~~2001-2002, and 2002-2003~~ 2003-2004²

- A. If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.

The maximum amount of reimbursement provided in subdivision (a) for an independent contractor may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without incurring the additional costs claimed by the local agency or school district.

- B. Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable within the limitations imposed under A. above. Provide copies of the invoices and/or claims that were paid. For the preparation and submission of claims pursuant to Government Code sections 17561 and 17564, submit an estimate of the actual costs that would have been incurred for that purpose if performed by employees of the local agency or school district; this cost estimate is to be certified by the governing body or its designee.

² The limitation added by (1) the Budget Act of 1995, Statutes 1995, chapter 303, in Item 0840-001-0001, Provision 1, and in Item 8885-001-0001, Provision 1, (2) the Budget Act of 1996, Statutes 1996, chapter 162, in Item 0840-001-0001, Provision 9, and in Item 8885-001-0001, Provision 1, (3) the Budget Act of 1997, Statutes 1997, chapter 282, in Item 0840-001-0001, Provision 9, and in Item 8885-001-0001, Provision 1, and (4) the Budget Act of 1998, Statutes 1998, chapter 324, in Item 0840-001-0001, Provision 8, and Item 8885-001-0001, Provision 1, (5) the Budget Act of 1999, Statutes 1999, chapter 50, in Item 0840-001-0001, Provision 8, and in Item 8885-001-0001, Provision 1, (6) the Budget Act of 2000, Statutes 2000, chapter 52, in Item 0840-001-0001, Provision 8, and in Item 8885-001-0001, Provision 1, (7) the Budget Act of 2001, Statutes 2001, chapter 106, in Item 0840-001-0001, Provision 8, and in Item 8885-001-0001, Provision 1, (8) the Budget Act of 2002, Statutes 2002, chapter 379, in Item 0840-001-0001, Provision 8, and in Item 8885-001-0001, Provision 1, the Budget Act of 2003, Statutes 2003, chapter 157, in Item 0840-001-0001, Provision 8, and in Item 8885-001-0001, Provision 1, is shown as part A. of this Appendix.

If reimbursement is sought for independent contractor costs that are in excess of [Test (1)] ten percent of the claims prepared and submitted by the independent contractor or [Test (2)] the actual costs that necessarily would have been incurred for that purpose if performed by employees or the local school district, appropriate documentation must be submitted to show that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district. Appropriate documentation includes the record of dates and time spent by staff of the contractor for the preparation and submission of claims on behalf of the local agency or school district, the contractor's billed rates, and explanation on reasons for exceeding Test (1) and/or Test (2). In the absence of appropriate documentation, reimbursement is limited to the lesser of Test (1) and/or Test (2). No reimbursement shall be permitted for the cost of contracted services without the submission of an estimate of actual costs by the local agency or school district.

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Item	Amount
(a) Misdemeanors: Booking/Fingerprinting (Ch. 1105, Stats. 1992).	
(b) Stolen Vehicles Notification (Ch. 337, Stats. 1990)	
(c) Sex Offenders: Disclosure by Law Enforcement Officers (Ch. 485, Stats. 1998)	
0820-490—Reappropriation, Department of Justice. The balance of the appropriation provided in the following citation is reappropriated for the purpose, and subject to the limitation, unless otherwise specified, provided for in the appropriation:	
0660—Public Buildings Construction Fund	
Item 0820-301-0660, Budget Act of 2002 (Ch. 379, Stats. 2002)	
(1) 85.60.010-Santa Barbara Replacement Laboratory—Construction	
0820-491—Reappropriation, Department of Justice. The balance of the appropriations for the License 2000 Database System provided in the following citations is reappropriated for the purposes provided for in those appropriations and shall be available for encumbrance and expenditure until June 30, 2004:	
0367—Indian Gaming Special Distribution Fund	
(1) Item 0820-001-0367, Budget Act of 2002 (Ch. 379, Stats. 2002). Up to \$1,052,000 appropriated in Program 65—Gambling Control.	
0569—Gambling Control Fines and Penalties Account	
(1) Item 0820-001-0569, Budget Act of 2002 (Ch. 379, Stats. 2002). Up to \$263,000 appropriated in Program 65—Gambling Control.	
Provisions:	
1. No funds may be expended from this item until a Special Project Report has been approved by the Department of Finance.	
0840-001-0001—For support of State Controller.....	67,959,000
Schedule:	
(1) 100000-Personal Services.....	70,468,000
(2) 300000-Operating Expenses and Equipment.....	38,283,000
(3) Less funding provided by State Controller's Statewide Information Technology Projects (Item 0841-001-0001(1)).....	-1,071,000
(4) Reimbursements.....	-31,789,000

Item	Amount
(5) Amount payable from the Motor Vehicle Fuel Account, Transportation Tax Fund (Item 0840-001-0061).....	-3,251,000
(6) Amount payable from the Highway Users Tax Account, Transportation Tax Fund (Item 0840-001-0062)...	-928,000
(7) Amount payable from the Local Revenue Fund (Item 0840-001-0330).....	-329,000
(8) Amount payable from the State School Building Lease-Purchase Fund (Item 0840-001-0344).....	-766,000
(9) Amount payable from the Federal Trust Fund (Item 0840-001-0890).	-1,152,000
(10) Amount payable from the State Penalty Fund (Item 0840-001-0903).....	-1,047,000
(11) Amount payable from various other unallocated nongovernmental cost funds (Retail Sales Tax Fund) (Item 0840-001-0988)	-197,000
(12) Amount payable from various other unallocated special funds (Item 0840-011-0494)	-43,000
(13) Amount payable from unallocated bond funds (Item 0840-011-0797).....	-177,000
(14) Amount payable from various other unallocated nongovernmental cost funds (Item 0840-011-0988).....	-42,000
Provisions:	
1. The appropriation made in this item shall be in lieu of the appropriation in Section 1564 of the Code of Civil Procedure for all costs, expenses, or obligations connected with the administration of the Unclaimed Property Law, with the exception of payment of owners' or holders' claims pursuant to Section 1540, 1542, 1560, or 1561 of the Code of Civil Procedure, or of payment of the costs of compensating contractors for locating and recovering unclaimed property due the state.	
2. Of the claims received for reimbursement of court-ordered or voluntary desegregation programs pursuant to Sections 42243.6, 42247, and 42249 of the Education Code, the Controller shall pay only those claims that have been subjected to	

Item

Amount

audit by school districts in accordance with the Controller's procedures manual for conducting audits of education desegregation claims. Furthermore, the Controller shall pay only those past-year actual claims for desegregation program costs that are accompanied by all reports issued by the auditing entity, unless the auditing entity was the Controller.

3. No less than 0.9 personnel-year in the Audits Division shall be used to audit education desegregation claims.
4. The Controller may, with the concurrence of the Director of Finance and the Chairperson of the Joint Legislative Budget Committee, bill affected state departments for activities required by Section 20050 of the State Administrative Manual, relating to the administration of federal pass-through funds.

No billing may be sent to affected departments sooner than 30 days after the Chairperson of the Joint Legislative Budget Committee has been notified by the Director of Finance that he or she concurs with the amounts specified in the billings.

5. (a) Notwithstanding subdivision (b) of Section 1531 of the Code of Civil Procedure, the Controller may publish notice in any manner that the Controller determines reasonable, provided that (1) none of the moneys used for this purpose is redirected from funding for the Controller's audit activities, (2) no photograph is used in the publication of notice, and (3) no elected official's name is used in the publication of notice.
- (b) No funds appropriated in this act may be expended by the Controller to provide general information to the public, other than holders (as defined in subdivision (e) of Section 1501 of the Code of Civil Procedure) of unclaimed property, concerning the unclaimed property program or possible existence of unclaimed property held by the Controller's office, except for informational announcements to the news media, through the exchange of information on electronic bulletin boards, or no more than \$15,000 per year to inform the public about this program in activities already organized by the Controller for other pur-

Item	Amount
poses. This restriction does not apply to sending individual notices to property owners (as required in subdivision (d) of Section 1531 of the Code of Civil Procedure).	
6. The Controller's office shall, through audits of Medi-Cal program and providers, enhance the General Fund resources or reduce the General Fund expenditures through identification of overpayments, cost avoidance, and other appropriate measures.	
7. Of the moneys appropriated to the Controller in this act, the Controller shall not expend more than \$500,000 to conduct posteligibility fraud audits of the Supplemental Security Income/State Supplementary Payment Program.	
8. The Commission on State Mandates shall provide, in applicable parameters and guidelines, as follows:	
(a) If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.	
(b) The maximum amount of reimbursement provided in subdivision (a) may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without incurring the additional costs claimed by the local agency or school district.	
9. The funds appropriated to the Controller in this act may not be expended for any performance review or performance audit except pursuant to specific statutory authority. It is the intent of the Legislature that audits conducted by the Controller, or under the direction of the Controller, shall be fiscal audits that focus on claims and disbursements, as provided for in Section 12410 of the Government Code. Any report, audit, analysis, or evaluation issued by the Controller for the 2003-04 fis-	

Item	Amount
upon order of the Department of Finance, or made available by the Department of Finance as a reimbursement, to other items and departments for CALSTARS-related activities by the Department of Finance.	
2. The funds appropriated in this act for purposes of CALSTARS-related data processing costs may be transferred between any items in this act by the Controller upon order of the Director of Finance. Any funds so transferred shall be used only for support of CALSTARS-related data processing costs incurred.	
8885-001-0001—For support of Commission on State Mandates, Program 10.....	1,302,000
Provisions:	
1. The Commission on State Mandates shall provide, in applicable parameters and guidelines, as follows:	
(a) If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that necessarily would have been incurred for that purpose if performed by employees of the local agency or school district.	
(b) The maximum amount of reimbursement authorized by subdivision (a) may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district.	
2. In the case where the commission receives one or more county applications for a finding of significant financial distress pursuant to Section 17000.6 of the Welfare and Institutions Code, and where the commission files a request under Section 27.00 of the Budget Act in order to carry out its duties with respect to those applications, then, notwithstanding the provisions of Section 17000.6 of the Welfare and Institutions Code, the	

COMMISSION ON STATE MANDATES

880 NINTH STREET, SUITE 300

SACRAMENTO, CA 95814

T: (916) 323-8662

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E-mail: osminfo@osm.ca.gov

August 15, 2003



To: Affected State Agencies and Interested Parties (see enclosed Mailing List)

RE: **Proposed Amendment of Parameters and Guidelines**

Mandate Reimbursement Process, CSM-4485

Statutes 1975, Chapter 486

Statutes 1984, Chapter 1459

Statutes 1995, Chapter 303 (Budget Act of 1995)

Statutes 1996, Chapter 162 (Budget Act of 1996)

Statutes 1997, Chapter 282 (Budget Act of 1997)

Statutes 1998, Chapter 324 (Budget Act of 1998)

Statutes 1999, Chapter 50 (Budget Act of 1999)

Statutes 2000, Chapter 52 (Budget Act of 2000)

Statutes 2001, Chapter 106 (Budget Act of 2001)

Statutes 2002, Chapter 379 (Budget Act of 2002)

Statutes 2003, Chapter 157 (Budget Act of 2003)

Enclosed for your review and comment is the Commission staff's annual amendment of the *Mandate Reimbursement Process* parameters and guidelines. It includes technical changes to incorporate the Budget Act of 2003, as well as recently adopted boilerplate language.

Written Comments

Written comments are due by **September 2, 2003**. Please file an original and two copies of responses with the Commission and simultaneously serve copies on other affected state agencies and interested parties on the enclosed mailing list. The staff analysis and final proposed amendment to the parameters and guidelines will be issued after all written comments are reviewed.

Hearing

Unless a prehearing is requested, this item is tentatively scheduled for hearing on September 25, 2003, at the State Capitol, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing and if other witnesses will appear. Requests for postponement of the hearing may be filed with the executive director in accordance with section 1183.01 of the regulations.

Please contact me at (916) 323-8211 if you have any questions.

Sincerely,

SHIRLEY OPIE

Assistant Executive Director

Enclosures

j:\mandates\4000\4485\2003\pgatr

MAILED: Mail List FAXED: _____
DATE: 8/15/03 INITIAL: CF _____
IRON: X FILE: _____
934-BINDER: _____

Amended Parameters and Guidelines

Statutes 1975, Chapter 486
Statutes 1984, Chapter 1459
Statutes 1995, Chapter 303 (Budget Act of 1995)
Statutes 1996, Chapter 162 (Budget Act of 1996)
Statutes 1997, Chapter 282 (Budget Act of 1997)
Statutes 1998, Chapter 324 (Budget Act of 1998)
Statutes 1999, Chapter 50 (Budget Act of 1999)
Statutes 2000, Chapter 52 (Budget Act of 2000)
Statutes 2001, Chapter 106 (Budget Act of 2001)
Statutes 2002, Chapter 379 (Budget Act of 2002)
Statutes 2003, Chapter 1577 (Budget Act of 2003)

Mandate Reimbursement Process

[For fiscal years 1995-1996, 1996-1997, 1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002, and 2002-2003 only, these parameters and guidelines are amended; pursuant to the requirements of: (1) provision 11 of Item 0840-001-001, and provision 1 of Item 8885-001-0001 of the Budget Act of 1995; (2) provision 9 of Item 0840-001-0001, and provision 1 of Item 8885-001-0001 of the Budget Act of 1996; (3) provision 9 of Item 0840-001-0001, and provision 1 of Item 8885-001-0001 of the Budget Act of 1997; (4) provision 8 of Item 0840-001-0001, and provision 1 of Item 8885-001-0001 of the Budget Act of 1998; (5) provision 8 of Item 0840-001-0001, and provision 1 of Item 8885-001-0001 of the Budget Act of 1999; (6) provision 8 of Item 0840-001-0001, and provision 1 of Item 8885-001-0001 of the Budget Act of 2000; (7) provision 8 of Item 0840-001-0001, and provision 1 of Item 8885-001-0001 of the Budget Act of 2001; and (8) provision 8 of Item 0840-001-0001, and provision 1 of Item 8885-001-0001 of the Budget Act of 2002; and (9) provision 8 of Item 0840-001-0001, and provision 1 of Item 8885-001-0001 of the Budget Act of 2003 to include Appendix A.]

Mandate Reimbursement Process

Adopted: November 20, 1986
First Amendment Adopted: March 26, 1987
Second Amendment Adopted: October 26, 1995
Third Amendment Adopted: January 30, 1997
Fourth Amendment Adopted: September 25, 1997
Fifth Amendment Adopted: October 29, 1998
Sixth Amendment Adopted: September 30, 1999
Seventh Amendment Adopted: September 28, 2000
Eighth Amendment Adopted: October 25, 2001
Ninth Amendment Adopted: February 27, 2003
Tenth Amendment Adopted:

I. SUMMARY OF THE MANDATE

Statutes 1975, chapter 486, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the state. In addition, Statutes 1975, chapter 486 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Statutes 1984, chapter 1459, created the Commission on State Mandates (Commission), which replaced the Board of Control with respect to hearing mandate cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by article XIII B, section 6 of the California Constitution for state mandates under Government Code section 17552.

Together these laws establish the process by which local agencies receive reimbursement for state-mandated programs. As such, they prescribe the procedures that must be followed before mandated costs are recognized. They also dictate reimbursement activities by requiring local agencies and school districts to file claims according to instructions issued by the Controller.

On March 27, 1986, the Commission determined that local agencies and school districts incurred "costs mandated by the state" as a result of Statutes 1975, chapter 486, and Statutes 1984, chapter 1459. Specifically, the Commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program as well as to obtain reimbursement for the costs of mandated programs.

II. ELIGIBLE CLAIMANTS

Any local agency as defined in Government Code section 17518, or school district as defined in Government Code section 17519, which incurs increased costs as a result of this mandate is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

- (a) A local agency or school district may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).
- (b) A local agency or school district may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
- (c) In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between October 15 and January 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Reimbursable actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561 (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct, based upon personal knowledge," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

A. Scope of Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur state-mandated costs. The purpose of this test claim is to establish that local governments cannot be made financially whole unless all state mandated costs -- both direct and indirect -- are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of state-imposed mandates, all resulting costs are recoverable.

B. Reimbursable Activities

1. Test Claims

All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including those same costs of an unsuccessful test claim if an adverse Commission ruling is later reversed as a result of a court order. These activities include, but are not limited to, the following: preparing and presenting test claims,

developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions. The costs of all successful test claims are reimbursable.

Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and indirect costs.

2. Reimbursement Claims

All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local agencies and school districts. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and indirect costs.

Incorrect Reduction Claims are considered to be an element of the reimbursement process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

3. Training

a. Classes

Include the costs of classes designed to assist the claimant in identifying and correctly preparing state-required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate. (One-time activity per employee)

b. Commission Workshops

Participation in workshops convened by the Commission is reimbursable. Such costs include, but are not limited to, salaries and benefits, transportation, and per diem. This does not include reimbursement for participation in rulemaking proceedings.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contract Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Reporting

1. Local Agencies

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services

distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the following methodologies:

- a. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
- b. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

2. School Districts

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central

governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

3. County Offices of Education

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

4. Community College Districts

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimant experiences in the same program as a direct result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, services fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

¹This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (a), and California Code of Regulations, title 2, section 1183.2.

(Continue to Appendix A)

PARAMETERS AND GUIDELINES

Statutes 1975, Chapter 486

Statutes 1984, Chapter 1459

APPENDIX A

Limitation on Reimbursement for Independent Contractor Costs During Fiscal Years 1995-1996, 1996-1997, 1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002, ~~and 2002-2003, and 2003-2004~~²

- A. If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.

The maximum amount of reimbursement provided in subdivision (a) for an independent contractor may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without incurring the additional costs claimed by the local agency or school district.

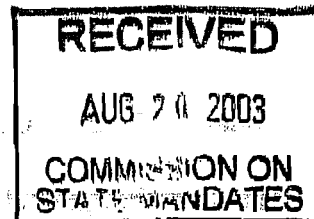
- B. Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable within the limitations imposed under A. above. Provide copies of the invoices and/or claims that were paid. For the preparation and submission of claims pursuant to Government Code sections 17561 and 17564, submit an estimate of the actual costs that would have been incurred for that purpose if performed by employees of the local agency or school district; this cost estimate is to be certified by the governing body or its designee.

² The limitation added by (1) the Budget Act of 1995, Statutes 1995, chapter 303, in Item 0840-001-001, Provision 11, and in Item 8885-001-001, Provision 1, (2) the Budget Act of 1996, Statutes 1996, chapter 162, in Item 0840-001-0001, Provision 9, and in Item 8885-001-0001, Provision 1, (3) the Budget Act of 1997, Statutes 1997, chapter 282, in Item 0840-001-0001, Provision 9, and in Item 8885-001-0001, Provision 1, and (4) the Budget Act of 1998, Statutes 1998, chapter 324, in Item 0840-001-0001, Provision 8, and Item 8885-001-0001, Provision 1, (5) the Budget Act of 1999, Statutes 1999, chapter 50, in Item 0840-001-0001, Provision 8, and in Item 8885-001-0001, Provision 1, (6) the Budget Act of 2000, Statutes 2000, chapter 52, in Item 0840-001-0001, Provision 8, and in Item 8885-001-0001, Provision 1, (7) the Budget Act of 2001, Statutes 2001, chapter 106, in Item 0840-001-0001, Provision 8, and in Item 8885-001-0001, Provision 1, (8) the Budget Act of 2002, Statutes 2002, chapter 379, in Item 0840-001-0001, Provision 8, and in Item 8885-001-0001, Provision 1, (9) the Budget Act of 2003, Statutes 2003, chapter 157, in Item 0840-001-0001, Provision 8, and in Item 8885-001-0001, Provision 1, is shown as part A. of this Appendix.

If reimbursement is sought for independent contractor costs that are in excess of [Test (1)] ten percent of the claims prepared and submitted by the independent contractor or [Test (2)] the actual costs that necessarily would have been incurred for that purpose if performed by employees or the local school district, appropriate documentation must be submitted to show that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district. Appropriate documentation includes the record of dates and time spent by staff of the contractor for the preparation and submission of claims on behalf of the local agency or school district, the contractor's billed rates, and explanation on reasons for exceeding Test (1) and/or Test (2). In the absence of appropriate documentation, reimbursement is limited to the lesser of Test (1) and/or Test (2). No reimbursement shall be permitted for the cost of contracted services without the submission of an estimate of actual costs by the local agency or school district.

LAW OFFICES OF SPECTOR, MIDDLETON, YOUNG & MINNEY, LLP

AUGUST 19, 2003



Ms. Shirley Opie, Assistant Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: **Comments on Proposed Parameters and Guidelines Amendment**
Mandate Reimbursement Process, CSM-4485

Dear Ms. Opie:

After reviewing the proposed amendments to the *Mandate Reimbursement Process* parameters and guidelines, one question stands out concerning the "Eligible Claimants" section. Specifically, is there a legal justification for omitting Special Districts as defined in Government Code section 17520 as eligible claimants? Currently, section II of the parameters and guidelines lists only Government Code section 17518 (local agencies) and section 17519 (school districts) as eligible claimants. Clarification on this point would be appreciated.

If you have any questions concerning this letter, please feel free to contact me at (916) 646-1400.

Sincerely,
LAW OFFICES OF SPECTOR,
MIDDLETON, YOUNG & MINNEY, LLP

David E. Scribner
ATTORNEY AT LAW

Cc: Mail List

Comments on Proposed Parameters and Guidelines Amendment
Mandate Reimbursement Process, CSM-4485

PROOF OF SERVICE

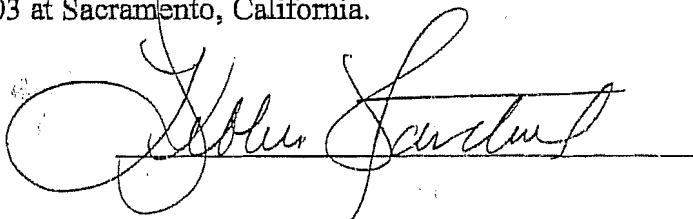
I, Debbie D. Standard declare:

I am over the age of eighteen years and not a party to the within action. I am employed in the County of Sacramento, California and my business address is 7 Park Center Drive, Sacramento, California, 95825.

On the date stated below, I served the within Comments on Proposed Parameters and Guidelines Amendment *Mandate Reimbursement Process, CSM-4485* on the parties in said cause:

- ☒ by Mail by placing a true copy thereof, enclosed in a sealed envelope with postage prepaid addressed as stated below. I placed the envelope for collection and processing for mailing following this business' ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
- ☐ by Personal Service by placing a true copy thereof, enclosed in a sealed envelope, and personally delivered as stated below.
- ☐ by Overnight Delivery by placing a true copy thereof enclosed in a sealed envelope, with delivery fees paid or provided for, in a designated area for outgoing overnight mail, addressed as set forth below. In the ordinary course of business mail placed in that designated area is picked up that same day for delivery the following business day.
- ☐ By Facsimile. I caused a true facsimile thereof to be electronically transmitted to the parties stated below by using their facsimile number indicated above. Said transmission was reported as complete and without error. A copy of the transmission report is attached to this proof of service.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on August 19, 2003 at Sacramento, California.



RECEIVED

OCT 20 2003

**COMMISSION ON
STATE MANDATES**

PUBLIC HEARING

COMMISSION ON STATE MANDATES

--oOo--

ORIGINAL

TIME: 9:33 a.m.

DATE: Thursday, September 25, 2003

PLACE: Commission on State Mandates
State Capitol, Room 126
Sacramento, California

--oOo--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--oOo--

Reported By: DANIEL P. FELDHAUS, CSR #6949, RDR, CRR

A P P E A R A N C E S

COMMISSIONERS PRESENT

SHELLEY MATEO, Chair
Representative of
STEVE PEACE, Director
State Department of Finance

WALTER BARNES
Representative of
STEVE WESTLY
State Controller

JOHN LAZAR
City Council Member
City of Turlock

DAVID ROSEBNERG
Supervisor
Yolo County Board of Supervisors

BRUCE VANHOUTEN
Representative of
PHILIP ANGELIDES
State Treasurer

SHERRY WILLIAMS
Representative of
STEVEN A. NISSEN, Director
State Office of Planning and Research

COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director

PAUL M. STARKEY
Chief Legal Counsel

CATHERINE M. CRUZ
Program Analyst

SHIRLEY OPIE
Assistant Executive Director

I N D E X

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1 [pointing to Ms. Higashi].

2 I'm pleased to see in the audience some of the faces
3 that I dealt with a decade ago. But you're going to need
4 to be patient with me today. It has been a long time.
5 So if I take a wrong turn here anywhere on protocol, let
6 me know. I would appreciate it.

7 So, Paula, that takes us to our first item.

8 MS. HIGASHI: The first item, which is Item 1,
9 approval of minutes of our last hearing on July 31st.

10 CHAIR MATEO: Do we have any questions or comments?

11 MEMBER WILLIAMS: No.

12 CHAIR MATEO: No?

13 Do we have a motion?

14 MEMBER ROSENBERG: I'll move the minutes.

15 MEMBER WILLIAMS: Second.

16 CHAIR MATEO: I have a motion and a second.

17 All in favor.

18 (A chorus of "ayes" was heard.)

19 MEMBER VANHOUTEN: And for the record, I abstain.

20 CHAIR MATEO: We have one abstention.

21 That motion passes.

22 MS. HIGASHI: This brings us to the proposed consent
23 calendar. All of you should have before you a green
24 sheet, which lists the items on the consent calendar.

25 For the record, I'll read them: Item 6, Item 9, Item 10,

Commission on State Mandates - September 25, 2003

1 Item 11, Item 12, Item 14, Item 15.

2 MEMBER LAZAR: I move adoption.

3 CHAIR MATEO: Move adoption?

4 MEMBER WILLIAMS: So moved.

5 MEMBER ROSENBERG: I'd like to discuss Items 6, 9,

6 10, 11, 12, 14 -- I'm kidding, actually.

7 [Laughter]

8 CHAIR MATEO: It's okay.

9 MEMBER ROSENBERG: You were ready for that.

10 MS. HIGASHI: We were ready.

11 CHAIR MATEO: Paula, you didn't warn me about this.

12 Okay, I have a motion and a second on the consent
13 calendar.

14 All in favor?

15 (A chorus of "ayes" was heard.)

16 CHAIR MATEO: Do we do voice votes on these?

17 MS. HIGASHI: We have in the past, especially if
18 it's unanimous.

19 CHAIR MATEO: Okay. So that motion passes.

20 MS. HIGASHI: This brings us to Item 2. And just
21 for the record, this is a standing agenda item, which
22 relates to executive director appeals. There are no
23 appeals to be heard today. So we can move forward to the
24 hearing portion of the meeting.


25 And, as we typically do at our hearings, we have a

REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were reported by me at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings, nor in any way interested in the outcome of the cause named in said matter.

In witness whereof, I have hereunto set my hand this 20th day of October 2003.



DANIEL P. FELDHAUS
CSR #6949, RDR, CRR

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
September 25, 2003

Present: Chairperson Shelley Mateo
Representative of the Director of the Department of Finance
Member Bruce Van Houten
Representative of the State Treasurer
Member Sherry Williams
Representative of the Director of the Office of Planning and Research
Member Walter Barnes
Representative of the State Controller
Member John Lazar
City Council Member
Member David Rosenberg
County Supervisor

Vacant: Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Mateo called the meeting to order at 9:33 a.m.

Chairperson Mateo introduced herself.

APPROVAL OF MINUTES

Item 1 July 31, 2003

Upon motion by Member Rosenberg and second by Member Williams, the minutes were adopted. Member Van Houten abstained.

PROPOSED CONSENT CALENDAR

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS,
TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

PROPOSED STATEMENTS OF DECISION – TEST CLAIMS

Item 6 *Postmortem Examinations: Unidentified Bodies, Human Remains*, 00-TC-18
County of Los Angeles, Claimant
Government Code Sections 27521 & 27521.1
Health and Safety Code Section 102870
Penal Code Section 14202
Statutes 2000, Chapter 284 (SB 1736)

COURT ORDERS TO SET ASIDE PRIOR STATEMENTS OF DECISION
PURSUANT TO GOVERNMENT CODE SECTION 17559, SUBDIVISION (b).

- Item 9 *Standardized Emergency Management System (SEMS)*, CSM 4506
Government Code Section 8607
Statutes 1992, Chapter 1069 (SB 1841)
California Code of Regulations, Title 19, Sections 2400-2450
Adopted on May 25, 2000, and remanded by County of Los Angeles, Superior
Court of California, Case No. BS069611 (*County of San Bernardino v.*
Commission on State Mandates)
- Item 10 *School Site Councils and Brown Act Reform*, CSM 4501 and
Portions of CSM 4469
Government Code Section 54952 and Education Code Section 35147
Statutes 1993, Chapter 1138 (SB 1140); Statutes 1994, Chapter 239 (SB 355)
Adopted on April 27, 2000, and remanded by County of Sacramento, Superior
Court of California, Case No. 00CS00866, pursuant to the opinion of the
California Supreme Court, Department of Finance v. Commission on State
Mandates, et al (2003) 30 Cal.4th 727.

PROPOSED STATEMENT OF DECISION – INCORRECT REDUCTION CLAIM

- Item 11 *Graduation Requirements – Remodeling Costs*, 01-4435-I-43
Paso Robles Joint Unified School District, Claimant
Education Code Section 51225.3
Statutes 1983, Chapter 498 (SB 813)

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS,
TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 12 *Mandate Reimbursement Process*, CSM-4485
Statutes 1975, Chapter 486 (AB 1375)
Statutes 1984, Chapter 1459 (SB 2337)
Statutes 2003, Chapter 157 (Budget Act of 2003)
- Item 14 *Pupil Promotion and Retention*, 98-TC-19
San Diego Unified School District, Claimant
Education Code Sections 37252, 37252.5, 48070 and 48070.5
Statutes of 1998, Chapters 742 and 743, et al. (AB 1626 and AB 1639)
- Item 15 *Redevelopment Agencies – Tax Disbursement Reporting*, 99-TC-06
County of Los Angeles, Claimant
Health and Safety Code Section 33672.7
- Statutes 1998, Chapter 39 (SB 258)

Member Lazar moved for adoption of the consent calendar, which consisted of items 6, 9, 10, 11, 12, 14, and 15. With a second by Member Williams, the consent calendar was unanimously adopted.

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181, SUBDIVISION (c)

Item 2 Staff Report

Paula Higashi, Executive Director, reported that no appeals were filed.

The parties and witnesses participating in the hearing of the agenda items were sworn.

[At this time, Member Barnes entered the hearing room.]

TEST CLAIM

- Item 3 *Standardized Account Code Structure*, 97-TC-17, 02-TC-14
Brentwood Union School District, Claimant
Statutes 1993, Chapter 237 et al. (SB 94)**

PROPOSED STATEMENT OF DECISION – TEST CLAIM

- Item 7 *Standardized Account Code Structure*, 97-TC-17, 02-TC-14
Brentwood Union School District, Claimant
(See code sections and statutes in Item 3)**

Items 3 and 7 were withdrawn by the claimant.

TEST CLAIM

- Item 4 *Peace Officer Personnel Records: Unfounded Complaints and Discovery*,
00-TC-24, 00-TC-25, 02-TC-07, 02-TC-08
Santa Monica Community College District, Claimant
Evidence Code Sections 1043, 1044, 1045, 1046 and 1047
Penal Code Sections 832.5, 832.7 and 832.8
Statutes 1978, Chapter 630 (SB 1436); Statutes 1982, Chapter 946 (SB 1065); Statutes 1985, Chapter 539 (AB 1112); Statutes 1988, Chapter 685 (SB 1027); Statutes 1989, Chapters 615 (AB 2222) and 693 (SB 859)
Statutes 1994, Chapter 741 (SB 2058); Statutes 1996, Chapters 220 (SB 1839) and 1108 (AB 3434); Statutes 1998, Chapter 25 (AB 1016);
Statutes 2000, Chapter 971 (AB 2559); Statutes 2002, Chapter 63 (AB 1873)**

Katherine Tokarski, Commission Counsel, presented this item. She noted that this item was originally four test claims filed individually by a city, county, and a community college district on legislation addressing the discovery of peace officer personnel records and citizen complaints on peace officers. At the July hearing, the Commission adopted the staff analysis for the issues specific to city and county claimants by a 5 – 1 vote. The issues specific to community college districts were postponed to this hearing for testimony and vote.

Ms. Tokarski explained staff's finding that pursuant to state law, the essential function of school districts is to provide public education. Therefore, the statutory duties that follow from the discretionary activities of providing their own police department do not impose a reimbursable state mandate. Staff recommended that the Commission find that school districts are not eligible claimants for the alleged test claim statutes.

Parties were represented as follows: Keith Petersen, representing the Santa Monica Community College District; and Susan Geanacou, for the Department of Finance.

Mr. Petersen asserted that the threshold issue was what was going to be reimbursed: either the specific employees performing the mandate or the mandate itself. He stated that there was no dispute that the activity to be reimbursed was new; however, the dispute was whether schools, including community colleges, were going to be reimbursed for their costs associated with the mandate. The Commission staff found such costs to be discretionary.

Mr. Petersen noted that the Commission had never before excluded any class of employee from reimbursement, whereas in this case, staff was recommending the exclusion of peace officers. He noted, as an exception to the general rule, the Commission found 12 years ago that the cost of classroom teachers performing mandates during regular classroom hours was not reimbursable since the school day was not extended. He argued that the decision was to not reimburse that portion of the mandate occurring during the regular school day. Therefore, the focus in this case should be whether the activity is reimbursable, not whether the person performing the activity is reimbursable.

In addition, Mr. Petersen maintained that staff's conclusion, which is that operating police departments is not an essential governmental function of providing public education, contradicts the definition in the *County of Los Angeles* and *Carmel Valley* cases. He argued that mandate case law does not limit school district reimbursement to education items, but rather, school districts provide public service like any other local agency. Mr. Petersen contended that while all school districts do not employ peace officers, hence the term discretionary, this fact does not exclude them from reimbursement. He stated that staff did not reference any law here or in the analysis specific to cities and counties that makes peace officers compulsory, and thus, there was no showing that peace officers were compulsory for cities and counties.

Further, Mr. Petersen argued that staff's reliance on the *Kern* case [*Department of Finance v. Commission on State Mandates* (2003)] was not an adequate basis to support its recommendation to exclude peace officers from reimbursement because the case was based on a funding issue, not a compulsion issue. He argued the test claim here does not involve a funding issue and there is no requirement that peace officers be compelled.

Ms. Geanacou supported the staff analysis. She noted that the *Kern* case was relevant because the decision did turn on the fact that the district's participation in eight of the nine underlying programs was discretionary. Here, participation in the underlying program of creating a police department at a school district and community college was also discretionary.

Regarding Mr. Petersen's statement that staff did not discuss whether cities and counties have a law enforcement responsibility, Ms. Tokarski pointed out the distinction made in the staff analysis, in which it was stated that school districts are not functioning within their educational governmental capacity when operating police departments. In contrast, article XI, sections 1 and 5 of the California Constitution provides for the formation of cities and counties, whose primary function is to provide law enforcement for the state's residents.

Ms. Tokarski maintained that in this case, the underlying program was a discretionary activity of forming police departments and employing peace officers. While it is good public policy, it was not required, and therefore, it is not reimbursable for the activities alleged in the test claim.

Member Rosenberg stated that Mr. Petersen made a compelling argument. He asked staff to

address his point, by analogy, that the function and not who was performing the function should be assessed in determining whether or not there was a mandate.

Assuming a situation where a vice-principal, a discretionary position, is responsible for undertaking a new program, Ms. Tokarski submitted that if school districts must comply with particular discipline procedures and vice-principals are responsible for performing those activities, then the activities are reasonable and it does not matter who performs the activities. The activities in this case only come about because the districts are employing peace officers, which they do not need to do.

Member Rosenberg requested Mr. Petersen to comment. Mr. Petersen asserted that staff's position contradicted what the Commission had always done, such as in the *Pupil Counseling and Pupil Classroom Visits* program. That mandate required school site personnel to respond to requests from parents to visit the classroom and to discuss discipline issues, and the Commission decided in that case that there was no distinction about who provided the services, just that the services were provided. He added that the Commission had previously recognized that school districts and community colleges did other things apart from public education, and thus, he contended that the staff's position in this case had no basis in fact or law. Instead, this was a policy preference.

Mr. Petersen further stated that court cases made no distinction between the public safety function of schools and cities and counties. Penal Code section 830.31 stated that peace officers included community college police and school police. He reiterated that discretion was not the issue. It was whether or not the activities are implemented.

Chairperson Mateo requested clarification as to the relevance of the discussion related to the employees who performed the activities because the issue was the activity itself. Paul Starkey, Chief Legal Counsel, clarified that the policy decision is set out in the Constitution, which vests traditional police functions in the local agencies, compared with the specific Education Code sections stating that the police function can be carried out through the school districts at their discretion. This issue of discretion was upheld in the recent *Kern* case decision, which he believed gave clear direction that if a local agency can elect to make a policy decision, they do so at their own discretion. He commented that while the Education Code allows it, it is not required. Mr. Petersen disagreed.

Member Barnes felt staff's analysis was on point. He stated his belief that the law was intended to apply to a class of employees, which in this case would be all people categorized as police officers.

Ms. Tokarski clarified that the activities were being imposed on the employer of the peace officer rather than that class of employee. She explained that school districts did not have to employ peace officers.

Mr. Petersen objected to staff's position. He commented that the basic definitions in place for the last 20 years have directed the Commission to decide to reimburse the activity, not the person doing it. He stated that the *Kern* case was not relevant here because it said nothing about compulsion, and the decision was based on a funding issue, which was not the case here. Further, he maintained that there was no new issue because it was decided 12 years ago that, with the exclusion of duties occurring in the classroom, the employee doing the work would be reimbursed, regardless of who performed the activity.

Member Williams made a motion to adopt the staff analysis, which was seconded by Member Barnes.

Member Rosenberg commented that Mr. Petersen made a very good policy argument; however, the law was sorted out in the Constitution, which imposed a mandatory duty on the cities and counties to provide law enforcement, but not on school districts.

Member Barnes requested clarification whether the Commission was voting on school districts, K through 14. Ms. Tokarski confirmed.

The motion made by Member Williams carried unanimously.

PROPOSED STATEMENTS OF DECISION – TEST CLAIM

Item 8 *Peace Officer Personnel Records: Unfounded Complaints and Discovery*,
00-TC-24, 00-TC-25, 02-TC-07, 02-TC-08
City of Hayward, Santa Monica Community College District, and County of
San Mateo, Claimants (See code sections and statutes in Item 4)

Katherine Tokarski, Commission Counsel, presented this item. She stated that this proposed Statement of Decision includes the material approved at the July hearing, as well as the vote taken in the previous item.

Parties were represented as follows: Keith Petersen, representing the Santa Monica Community College District; and Allan Burdick, for the City of Hayward and the County of San Mateo.

Chairperson Mateo and Member Rosenberg requested clarification as to the process taking place. Ms. Higashi explained that normally, proposed Statements of Decision would be on the consent calendar. However, since the claims were heard separately, it allowed Mr. Petersen to comment. She clarified that the Commission's task was to simply determine whether the proposed Statement of Decision reflected the Commission's decision.

Mr. Petersen stated that the proposed Statement of Decision accurately reflected the Commission's decision, but he still disagreed with the decision.

Mr. Burdick did not disagree with the proposed decision. However, he commented that there had been recent discussions about what Statements of Decision reflected. He noted that the discussion of a number of items during the hearing were not necessarily included in the decision. Therefore, he stated there should be discussion about what the Statement of Decision is intended to do.

Member Rosenberg asked a question regarding voting on a decision. Ms. Higashi clarified that members' votes are reflected in the decision. She added that because of the switch to bimonthly hearings, the proposed Statement of Decision was on the same agenda as the test claim to keep items moving.

Member Lazar made a motion to adopt the staff recommendation. With a second by Member Barnes, the motion carried unanimously.

RECONSIDERATION OF STATEMENT OF DECISION

Item 5 *Crime Victims' Domestic Violence Incident Reports*, 99-TC-08
County of Los Angeles, Claimant
Penal Code Section 13730 and Family Code Section 6228
Statutes 1984, Chapter 1609 (SB 1472)
Statutes 1995, Chapter 965 (SB 132)
Statutes 1999, Chapter 1022 (AB 403)

Camille Shelton, Senior Commission Counsel, presented this item for reconsideration on the Commission's Statement of Decision issued in May 2003. She noted that the issue was limited to whether storage of the report and face sheet, pursuant to Family Code section 6228, subdivision (e), constitutes a new program or higher level of service for five years, as the Commission found, or for three years. The staff analysis on reconsideration indicates that existing Government Code statutes, which were not considered in the Statement of Decision, require local agencies to keep all documents required by law for two years.

Ms. Shelton stated the claimant's argument that the Government Code statutes were irrelevant since there was no law prior to Family Code section 6228 that required local agencies to store domestic violence incident reports in a readily accessible manner. Staff disagreed with the claimant. Ms. Shelton maintained that the plain language of Family Code section 6228, subdivision (e), does not address the manner of storage. Rather, it establishes the length of time the documents must be kept by the local agency. Therefore, existing Government Code sections 26202 and 34090, which established the timing for the retention of all records required by law, are relevant and apply to the test claim statute.

In addition, Ms. Shelton explained that the Commission had discretion to address the manner of storage when establishing the reasonable means of complying with the mandate in the parameters and guidelines. As stated in the staff analysis, staff recommended that the Commission find that the Statement of Decision contains an error of law because Family Code section 6228, subdivision (e), mandates a new program or higher level of service for storing the domestic violence incident report and face sheets for three years instead of five. Staff further recommended that the Commission amend the Statement of Decision to reflect the analysis of the Government Code sections, and to change the five-year finding to three years.

Ms. Shelton stated that under the Commission's regulations, a supermajority of five affirmative votes was required to change a prior final decision.

Parties were represented as follows: Leonard Kaye, representing the County of Los Angeles; and Sarah Mangum and Susan Geanacou, for the Department of Finance.

Mr. Kaye asserted that the issue was whether retention of documents was the same as storage of documents. He argued that the Commission must continue to adhere to the specific terminology found in the statute and that prior law makes no reference to the storage of domestic violence records. Therefore, he recommended that the Commission adopt a slightly modified version of staff's proposed language, as follows: "Storing domestic violence incident reports and face sheets, including retaining such documents for only three years."

Staff did not object to the recommended change because the law requires local agencies to keep the documents in a manner that they are not destroyed. Thus, the change still preserves the Commission's discretion to determine the manner of storage in the parameters and guidelines.

Ms. Geanacou requested clarification as to the material difference of the claimant's proposal to staff's proposal. Mr. Kaye clarified that the claimant's proposal provides more guidance in that all the activities required under storage costs could be presented, including record retention.

Chairperson Mateo asked if the recommended change in any way abridges the Commission's limited reconsideration of this matter. Ms. Shelton said no.

Member Williams asked if the phrase "only three years" was restricting. Mr. Kaye stated that the word "only" could be deleted.

Member Rosenberg requested clarification as to the distinction between the words retention and storage. Mr. Kaye explained that the statute requires that documents be made readily available; otherwise there were penalties. Thus, he contended that retention of documents was a necessary but not sufficient condition for performing the storage requirements under the test claim legislation. He added that storage may require transforming documents into a certain software or optically readable form, which has nothing to do with the duration of how long documents are kept. On the other hand, retention can mean failing to destroy. He maintained that his baseline distinction was the fact that irrespective of whether one activity was subsumed by another, the statutory language was different. Thus, he was trying to be liberal in terms of the language since prior law used the term retention, whereas current law uses the term storage. He added that the extent to which it should be more or less was a parameters and guidelines issue.

Member Rosenberg asked staff which term was the more appropriate word to use: retention or storage. Ms. Shelton stated that legally, local agencies were required to both store and retain documents. She reiterated that the manner of storage can be addressed in the parameters and guidelines.

Chairperson Mateo expressed hesitancy regarding the claimant's proposed change because it could retread a prior Commission decision.

Mr. Starkey noted that the original request used the term "store," which was used in the Statement of Decision. However he maintained that at this point in time, the focus was on the period of time that documents must be kept, not the possible interpretations of the word "storage."

Member Van Houten agreed with Mr. Starkey. However, he indicated that the claimant's testimony made him uncomfortable because it sounded like there was a higher level of custody associated with the claimant's proposed change.

Mr. Kaye reiterated that he was merely trying to clarify the language. He asserted that the statute requires the documents be made readily available, and thus, retention of documents was not synonymous with storage requirements.

Chairperson Mateo commented that the change had the potential for redefining the previous decision beyond what was really before the Commission here.

Member Barnes agreed that the manner of storage issue would be better dealt with during development of the parameters and guidelines. His concern was whether the Statement of Decision should reflect the total five years that documents must be kept.

Ms. Shelton explained that the Statement of Decision must find what exactly is the new program or higher level of service. Leaving five years in the decision would allow claimants to be reimbursed for five years instead of the three years. However, she noted that the Commission

may clarify the language to indicate that storage costs are reimbursable for three years following the initial two years. Member Barnes agreed.

Mr. Kaye believed that the clarification was not supported by any matter litigated before the Commission.

Ms. Shelton restated staff's recommendations, noting that the proposed Statement of Decision addressed Member Barnes' concern. She maintained that because prior law required the documents to be kept for two years, that is the initial period. The following three years was the higher level of service. Mr. Kaye argued that this was not found in writing.

Member Barnes stated his point of view that the three-year requirement was on top of the two years. Therefore, he made a motion to find an error of law and to adopt staff's recommendation as revised: "Storing domestic violence incident reports and face sheets for three years following the two-year period required under prior law."

Member Rosenberg seconded the motion, but withdrew it after the motion was clarified. He stated that he was not prepared to support the added language because he did not know whether the new requirements of the mandate actually imposed greater requirements of storage or retention over the prior law requirements for the first two years.

Member Van Houten seconded Member Barnes' motion. The motion failed 4 – 2, with Member Rosenberg and Member Williams voting "No."

Member Rosenberg made a motion to find that the Statement of Decision contained an error of law. With a second by Member Williams, the motion carried unanimously.

Member Rosenberg made a motion that was seconded by Member Lazar to adopt staff's proposed Statement of Decision with no revisions.

Member Barnes requested clarification on the motion, which Member Rosenberg provided. Member Barnes again raised the issue of possibly reflecting the total five years that documents must be kept.

Mr. Starkey explained that the original decision reflected a new program or higher level of service for five years. Staff overlooked a prior law requirement that the documents be stored for two years. Therefore, the intent of the reconsideration was to correct that error of law, which the Commission had just found.

Ms. Shelton maintained that when ruling on a Statement of Decision, the courts have instructed the Commission not to apply equity standards or define what is necessary to comply with the mandate. The Commission should only look at the plain language of the statute, in this instance, regarding the time element, not the manner of storage. She reiterated that the manner of storage can be addressed in the parameters and guidelines phase.

Member Rosenberg restated his motion to adopt staff's proposed Statement of Decision with no revisions. The motion carried unanimously.

[At this time, a short break was taken.]

¹ Section 1188.4, subdivision (g)(2), of the Commission's regulations requires five affirmative votes to change a prior final decision.

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 13 *Administrative License Suspension*, 98-TC-16
City of Newport Beach, Claimant
Vehicle Code Sections 13202, 13202.3, 13352, 13353, 13353.1, 13353.2, 13353.3, 13353.4, 13353.6, 13354, 13551, 13557, 13558, 13559, 14100, 14905, 14907, 23136, 23137, 23138, 23139, 23140, 23157, 23158.2, 23158.5
As Added or Amended by Statutes 1989, Chapter 1460 (SB 1623)
Statutes 1990, Chapter 431 (SB 1150)
Statutes 1992, Chapter 1281 (AB 3580)
Statutes 1993, Chapters 899 and 1244 (SB 126)
Statutes 1994, Chapter 938 (SB 1295), and
Statutes 1997, Chapter 5 (AB 74)

Item 13 was postponed by the claimant.

- Item 16 *Charter Schools II*, 99-TC-03
Los Angeles County Office of Education and
San Diego Unified School District, Claimants
Education Code Sections 47605, Subdivisions (j)(1) and (k)(3),
47605.5, 47607, and 47614
Statutes 1998, Chapters 34 and 673 (AB 544 and AB 2417)

PROPOSED AMENDMENTS TO CONSOLIDATE PARAMETERS AND GUIDELINES

- Item 17 Consolidation of *Charter Schools I*, CSM-4437
Education Code Section 47605, Subdivision (b), and former
Subdivisions (j)(1), (j)(2), and (j)(3)
Education Code Section 47607, Subdivisions (a) and (b)
Statutes 1992, Chapter 781 (SB 1448)
and
Charter Schools II, 99-TC-03
Los Angeles County Office of Education and
San Diego Unified School District, Claimants
(See code sections and statutes for Item 16)

Cathy Cruz, Program Analyst, presented items 16 and 17. She explained that item 16 included a provision that required claimants to re-file reimbursement claims for the original *Charter Schools* program for fiscal years 1998-1999 through 2002-2003. This provision was included because of changes in the law that: 1) established a fee authority that school districts or county offices of education must use to offset any claimed reimbursement for the costs of charter school supervisorial oversight under the existing *Charter Schools* program, and 2) replaced the activity related to the petition appeals process in the existing *Charter Schools* program.

However, staff finds that direction to re-file reimbursement claims reside with the State Controller's Office. Government Code section 17558, subdivision (a), requires the Commission to submit adopted parameters and guidelines to the Controller, who shall pay and audit the

reimbursement claims. Subdivision (b) of this section requires the Controller to issue claiming instructions after receiving the parameters and guidelines to assist local agencies and school districts in claiming costs.

Ms. Cruz noted that an errata sheet was before the Commission, which proposes that the effective date of the reimbursement period for item 17, the proposed consolidation of the parameters and guidelines, be changed from fiscal year 2003-2004 to January 1, 1999, the effective date of the *Charter Schools II* test claim legislation. With this modification, she stated that item 16 was no longer necessary, and therefore, staff withdrew item 16 for consideration and vote. Staff recommended that the Commission only adopt item 17, the proposed consolidated parameters and guidelines, but with the reimbursement period beginning January 1, 1999, and that staff be authorized to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

Parties were represented as follows: Art Palkowitz, representing the San Diego Unified School District; and Shawn Silva, with the State Controller's Office.

Mr. Silva requested that the item be continued to the next hearing to allow the Controller's Office the opportunity to research the issue of re-filing claims.

Mr. Palkowitz commented that procedurally, there was a code section or regulation that states that school districts cannot go back after one year to amend claims. In addition, he stated that school districts do not maintain records for an indefinite period of time. Regarding the request to continue, he argued that this claim was filed in 1998 and these issues should have been addressed earlier. Therefore, he felt it was inappropriate to grant the continuance.

Member Barnes indicated that he did not favor postponements. However, the issues arising from the changes made by staff raise questions that need to be looked into. He stated that the Controller's Office had no problem with the matters being consolidated, and no problem with staff withdrawing item 16. He just felt that they needed time to make sure that the Controller will have the ability to deal with possible erroneous claims.

Member Rosenberg and Chairperson Mateo did not object to the request for continuance.

Member Barnes made a motion to grant the continuance. With a second by Member Williams, the motion carried unanimously.

Member Barnes clarified that his motion concerned only item 17, and that he had no interest in item 16 coming before the Commission at the next hearing.

PROPOSED AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5.

Item 18 Adoption of Proposed Amendments to Sections 1181.1, 1183.01, 1183.3,
and Proposed New Section 1189.11.

Shirley Opie, Assistant Executive Director, presented this item. She noted that the purpose of the rulemaking was to incorporate the current methodology for developing statewide cost estimates into the Commission's regulations and to include changes to the conflict of interest code that require designated filers to complete ethics training.

Member Rosenberg requested confirmation that a member of the Commission who has completed ethics training pursuant to another position has met the requirement. Ms. Opie confirmed.

Member Barnes commented that he had no problem with the ethics training and orientation requirement. However, he believed that the Commission should wait for the Bureau of State Audits report to be released, later on that day in draft form, before incorporating procedures for developing statewide cost estimates. He expected that the report would contain specific recommendations for how to compute and develop the estimates.

Ms. Opie stated that the change in the regulations came out of the last report from the Bureau of State Audits on the *School Bus Safety* audit. That report recommended that the Commission incorporate the methodology for adopting statewide cost estimates. Her understanding from preliminary discussions with the Bureau was that their issues were more about the points and times rather than the calculation of estimates. She did not feel that their recommendations would have any material effect on the current proposal.

Ms. Higashi stated her concern that the Commission already filed the final report for the *School Bus Safety II* audit, which indicated that this rulemaking was in progress to incorporate the Bureau of State Audits' proposed changes.

Member Barnes stated that the reason for the delay is to deal with additional recommendations. He reiterated his expectation of the report.

Chairperson Mateo asked if there was any harm in moving forward now with the ethics portion and preparing another package for the Bureau's recommendations. Ms. Higashi said no because the recommendations were not yet known.

Allan Burdick, on behalf of the California State Association of Counties, agreed with Member Barnes. He added that he would like to see the proposed methodology as an alternative, but not the sole method for determining how statewide cost estimates are adopted.

Ms. Opie responded that the regulation, as written, preserved that flexibility.

Mr. Burdick noted that it was not always in the best interest of the state to move forward quicker. He asserted that if the intent was to complete the process within the prescribed statutory scheme, other alternatives should be explored.

Member Barnes recommended that the Commission proceed with the ethics portion of the proposed regulations and postpone consideration of the statewide cost estimate portion until the next meeting. Member Rosenberg agreed. Ms. Opie reminded the Commission that such an action would require staff to re-notice the regulations because it was a substantial change.

Therefore, Member Barnes moved to continue the entire matter. With a second by Member Rosenberg, the motion carried unanimously.

STAFF REPORTS

Item 19 Chief Legal Counsel's Report
Recent Decisions, Litigation Calendar

Mr. Starkey reported the following:

- *New Filings.* There were no new filings other than the *Animal Adoption* case, which was referenced in the report.

- *Recent Decisions.* The decision in the *County of Los Angeles* case was now final. Since it was a published decision, he stated that the case would be referenced in future Commission recommendations, as appropriate, as guidance from the court.
- *Litigation Calendar.* Two matters have been heard. First, the *Eastview Optional Attendance Area* case, which was in the Sacramento Superior Court, was heard in September and was decided in favor of upholding the Commission's decision. Second, the decision in the *County of San Diego MIA* case overturned the Commission's decision. There will be further reporting back to the Commission regarding next steps.

Item 20 Executive Director's Report
 Budget, Workload, Legislation

Ms. Higashi noted the following:

- *Workload.* There is a record number of 121 test claims on file with the Commission. Among them are 14 claims that could be consolidated for purposes of substantive analysis since the same statutes or code sections are pled.
- *Budget.* This year's Budget Act appropriated \$1.3 million for the Commission's operating expenses. This appropriation is subject to control section 4.10, which authorizes the Director of Finance to make additional budget reductions. The Commission's budget was subsequently reduced by \$195,300. A request to modify the adjustment was approved, but this was still confidential information since it has not yet been disclosed.

Regarding the 2004-2005 budget, a budget letter was issued directing state agencies to submit a permanent 20 percent reduction plan to the Department of Finance. This reduction plan was to be based on the amount in the final 2003-2004 Budget Act before any control section reductions were taken. In addition, it applies to each agency, and the Commission, not being under a super agency, was expected to take the full 20 percent. A request to be excluded from this base was denied. Therefore, staff continues to work on determining whether any statutory or constitutional changes should be proposed that are necessary to support the budget proposal.

Member Rosenberg commented that a 20 percent reduction was significant for such a small agency. There was further discussion regarding the Department of Finance's budget letter. Chairperson Mateo stated that this was still all part of the planning process.

- *Assembly Special Committee on State Mandates.* At the end of the session, it was believed that the committee would sponsor legislation. Four bills have been drafted to carry out and implement the committee's recommendations. The committee plans to reconvene in January.

Some of the issues raised have already been discussed at the staff level, including:

- The Commission's jurisdiction to reconsider prior decisions to respond to changes in the law and new court decisions;
- Rethinking procedures related to parameters and guidelines and statewide cost estimates;
- Establishing a cost recovery or fee authority for the Commission;

- Examining the State Mandates Claims Fund; and
- Reports to the Legislature.
- *Future Hearing Agendas.* The November agenda was still tentative.

Member Rosenberg noted that the scheduled November hearing was the same week as the County Supervisors meeting. He asked if it could possibly be changed. Chairperson Mateo did not object. Ms. Higashi stated that she would check with each member to find out which dates were available.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *County of San Diego v. Commission on State Mandates, et al.*, Case Number D039471, in the Appellate Court of the State of California, Fourth Appellate District, Division 1. CSM Case No. 01-L-16 [*San Diego MIA*]
2. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number B156870, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 01-L-17 [*Domestic Violence*]
3. *County of San Bernardino v. Commission on State Mandates, et al.*, Case Number BS069611, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 01-L-18 [*SEMS*]
4. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 02CS00994, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 02-L-01 [*School Bus Safety II*]
5. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number S109125, in the Supreme Court of the State of California. CSM Case No. 02-L-02 [*Pupil Expulsions*]
6. *County of San Bernardino v. Commission on State Mandates of the State of California, et al.*, Case Number B163801, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 02-L-04 [*Property Tax Administration*]
7. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number C044162, in the Appellate Court of the State of California, Third Appellate District. CSM Case No. 02-L-05 [*Physical Performance Tests*]
8. *Palos Verdes Peninsula Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS00897, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 02-L-06. [*Eastview Optional Attendance Area*]

9. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 03CS01069 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-01. [*Animal Adoption*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee.


Hearing no further comments, Chairperson Mateo adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Mateo reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

Hearing no further business, and upon motion by Member Williams and second by Member Rosenberg, Chairperson Mateo adjourned the meeting at 12:38 p.m.


PAULA HIGASHI
Executive Director

COMMISSION ON STATE MANDATES

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SACRAMENTO, CA 95814
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September 26, 2003

Mr. Mike Havey, Bureau Chief
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

And Affected State Agencies and Interested Parties (see enclosed mailing list)

RE: **Amended Parameters and Guidelines**
Mandate Reimbursement Process, CSM-4485
Statutes 1975, Chapter 486
Statutes 1984, Chapter 1459
Statutes 2003, Chapter 157 (Budget Act of 2003)

Dear Mr. Havey:

On September 25, 2003, the Commission on State Mandates adopted the enclosed amended parameters and guidelines.

If you have any questions, please contact Nancy Patton at (916) 323-8217.

Sincerely,

A handwritten signature in black ink that reads 'Paula Higashi'.

PAULA HIGASHI
Executive Director

Enclosure

MAILED: ✓ FAXED: _____
DATE: 9/26 INITIAL: SM
C-970- FILE: ✓
WORKING BINDER: _____

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE AMENDMENT TO PARAMETERS
AND GUIDELINES ON:

Statutes 1975, Chapter 486; Statutes 1984,
Chapter 1459; and Statutes 2003, Chapter 157
(Budget Act of 2003).

No. CSM-4485

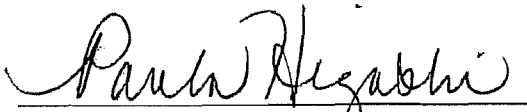
Mandate Reimbursement Process

ADOPTION OF AMENDMENT TO
PARAMETERS AND GUIDELINES
PURSUANT TO GOVERNMENT CODE
SECTION 17557 AND TITLE 2,
CALIFORNIA CODE OF REGULATIONS,
SECTIONS 1183.2 AND 1185.3.

(Adopted on September 25, 2003)

AMENDED PARAMETERS AND GUIDELINES

On September 25, 2003, the Commission on State Mandates adopted the attached
Amended Parameters and Guidelines.



PAULA HIGASHI, Executive Director

9-26-03

Date

Amended Parameters and Guidelines

Statutes 1975, Chapter 486

Statutes 1984, Chapter 1459

Statutes 2003, Chapter 1577 (Budget Act of 2003)

Mandate Reimbursement Process

[For fiscal year 2003-2004, these parameters and guidelines are amended, pursuant to the requirements of: provision 8 of Item 0840-001-0001, and provision 1 of Item 8885-001-0001 of the Budget Act of 2003 to include Appendix A.]

Adopted: November 20, 1986

First Amendment Adopted: March 26, 1987

Second Amendment Adopted: October 26, 1995

Third Amendment Adopted: January 30, 1997

Fourth Amendment Adopted: September 25, 1997

Fifth Amendment Adopted: October 29, 1998

Sixth Amendment Adopted: September 30, 1999

Seventh Amendment Adopted: September 28, 2000

Eighth Amendment Adopted: October 25, 2001

Ninth Amendment Adopted: February 27, 2003

Tenth Amendment Adopted: September 25, 2003

I. SUMMARY OF THE MANDATE

Statutes 1975, chapter 486, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the state. In addition, Statutes 1975, chapter 486 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Statutes 1984, chapter 1459, created the Commission on State Mandates (Commission), which replaced the Board of Control with respect to hearing mandate cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by article XIII B, section 6 of the California Constitution for state mandates under Government Code section 17552.

Together these laws establish the process by which local agencies receive reimbursement for state-mandated programs. As such, they prescribe the procedures that must be followed before mandated costs are recognized. They also dictate reimbursement activities by requiring local agencies and school districts to file claims according to instructions issued by the Controller.

On March 27, 1986, the Commission determined that local agencies and school districts incurred "costs mandated by the state" as a result of Statutes 1975, chapter 486, and Statutes 1984, chapter 1459. Specifically, the Commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program as well as to obtain reimbursement for the costs of mandated programs.

II. ELIGIBLE CLAIMANTS

Any local agency as defined in Government Code section 17518, or school district as defined in Government Code section 17519, which incurs increased costs as a result of this mandate is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

- (a) A local agency or school district may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).
- (b) A local agency or school district may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
- (c) In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between October 15 and January 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Reimbursable actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561 (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct, ", and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

A. Scope of Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur state-mandated costs. The purpose of this test claim is to establish that local governments cannot be made financially whole unless all state mandated costs -- both direct and indirect -- are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of state-imposed mandates, all resulting costs are recoverable.

B. Reimbursable Activities

1. Test Claims

All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including those same costs of an unsuccessful test claim if an adverse Commission ruling is later reversed as a result of a court order. These activities include, but are not limited to, the following: preparing and presenting test claims, developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions. The costs of all successful test claims are reimbursable.

Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and indirect costs.

2. Reimbursement Claims

All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local agencies and school districts. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and indirect costs.

Incorrect Reduction Claims are considered to be an element of the reimbursement process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

3. Training

a. Classes

Include the costs of classes designed to assist the claimant in identifying and correctly preparing state-required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate. (One-time activity per employee.)

b. Commission Workshops

Participation in workshops convened by the Commission is reimbursable. Such costs include, but are not limited to, salaries and benefits, transportation, and per diem. This does not include reimbursement for participation in rulemaking proceedings.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after

deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contract Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Reporting

1. Local Agencies

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the following methodologies:

- a. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
- b. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

2. School Districts

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

3. County Offices of Education

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

4. Community College Districts

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimant experiences in the same program as a direct result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, services fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

¹ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (a), and California Code of Regulations, title 2, section 1183.2.

(Continue to Appendix A)

PARAMETERS AND GUIDELINES

Statutes 1975, Chapter 486

Statutes 1984, Chapter 1459

APPENDIX A

Limitation on Reimbursement for Independent Contractor Costs During Fiscal Years 2003-2004²

- A. If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.

The maximum amount of reimbursement provided in subdivision (a) for an independent contractor may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without incurring the additional costs claimed by the local agency or school district.

- B. Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable within the limitations imposed under A. above. Provide copies of the invoices and/or claims that were paid. For the preparation and submission of claims pursuant to Government Code sections 17561 and 17564, submit an estimate of the actual costs that would have been incurred for that purpose if performed by employees of the local agency or school district; this cost estimate is to be certified by the governing body or its designee.

If reimbursement is sought for independent contractor costs that are in excess of [Test (1)] ten percent of the claims prepared and submitted by the independent contractor or [Test (2)] the actual costs that necessarily would have been incurred for that purpose if performed by employees or the local school district, appropriate documentation must be submitted to show that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district. Appropriate documentation includes the record of dates and time spent by staff of the contractor for the preparation and submission of claims on behalf of the local agency or school district, the contractor's billed rates, and explanation on reasons for

² The limitation added by the Budget Act of 2003, Statutes 2003, chapter 157, in Item 0840-001-0001, Provision 8, and in Item 8885-001-0001, Provision 1, is shown as part A. of this Appendix.

exceeding Test (1) and/or Test (2). In the absence of appropriate documentation, reimbursement is limited to the lesser of Test (1) and/or Test (2). No reimbursement shall be permitted for the cost of contracted services without the submission of an estimate of actual costs by the local agency or school district.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

September 26, 2003, I served the:

Amended Parameters and Guidelines

Mandate Reimbursement Process, CSM-4485

Statutes 1975, Chapter 486

Statutes 1984, Chapter 1459

Statutes 2003, Chapter 157 (Budget Act of 2003)

by placing a true copy thereof in an envelope addressed to:

Mr. Mike Havey, Bureau Chief
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 26, 2003, at Sacramento, California.


VICTORIA SORIANO

Commission on State Mandates

Original List Date: 7/28/2000
Last Updated: 9/8/2003
List Print Date: 09/26/2003
Claim Number: 4485
Issue: Mandate Reimbursement

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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COMMISSION ON STATE MANDATES
REVISED NOTICE AND AGENDA¹
State Capitol, Room 126
Sacramento, California

December 9, 2004
9:30 A.M.²

I. CALL TO ORDER, ROLL CALL, AND ELECTION OF CHAIRPERSON

II. APPROVAL OF MINUTES (action)

Item 1 September 30, 2004

III. CODE OF REGULATIONS, TITLE 2, SECTION 1181, SUBDIVISION (c).

(Note: This item is limited to appeals regarding this month's agenda items.)

Item 2 Staff Report (if necessary)

IV. PROPOSED CONSENT CALENDAR (action)

Note: If there are no objections to any of the following action items designated by an asterisk (), the Executive Director will include it on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.*

V. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

A. TEST CLAIMS AND PROPOSED STATEMENTS OF DECISION

(Note: Items 4, 6, 8, and 10 will not be voted on unless the staff recommendations for Items 3, 5, 7, and 9, respectively, are adopted.)

Item 3 *Lower Back Injury Presumption for Law Enforcement*, 01-TC-25
CSAC-EIA & County of Tehama, Claimants
Labor Code Section 32132
Statutes 2001, Chapter 834 (SB 424)

Item 4 Proposed Statement of Decision: *Lower Back Injury Presumption for Law Enforcement*, 01-TC-25

¹ This public meeting notice is available on the Internet at <http://www.csm.ca.gov>.

² A lunch break may be taken

- Item 5 *Skin Cancer Presumption for Lifeguards*, 01-TC-27
City of Newport Beach, Claimant
Labor Code Section 3212.11
Statutes 2001, Chapter 846 (AB 663)

- Item 6 Proposed Statement of Decision: *Skin Cancer Presumption for Lifeguards*,
01-TC-27

- Item 7 *Lifeguard Skin Cancer Presumption (K-14)*, 02-TC-16
Santa Monica Community College District, Claimant
Labor Code Section 3212.11
Statutes 2001, Chapter 846 (AB 663)

- Item 8 Proposed Statement of Decision: *Lifeguard Skin Cancer Presumption (K-14)*,
02-TC-16

- Item 9 *Domestic Violence Arrests and Victim Assistance*, 98-TC-14
County of Los Angeles, Claimant
Penal Code Sections 264.2, 13701, and 13519
Statutes 1998, Chapters 698, 701 & 702 (AB 1201, AB 2172, AB 2177)

- Item 10 Proposed Statement of Decision: *Domestic Violence Arrests and Victim Assistance*, 98-TC-14

VI. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

A. ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES AND AMENDMENTS

- Item 11* *Mandate Reimbursement Process*, CSM-4485
Statutes 1975, Chapter 486 (AB 1375); Statutes 1984, Chapter 1459 (SB 2337); Statutes 1995, Chapter 303 (AB 903 - Budget Act of 1995); Statutes 1996, Chapter 162 (SB 1393 - Budget Act of 1996); Statutes 1997, Chapter 282 (AB 107 - Budget Act of 1997); Statutes 1998, Chapter 324 (AB 1656 - Budget Act of 1998); Statutes 1999, Chapter 50 (SB 160 - Budget Act of 1999); Statutes 2000, Chapter 52 (AB 1740 - Budget Act of 2000); Statutes 2001, Chapter 106 (SB 739 - Budget Act of 2001); Statutes 2002, Chapter 379 (AB 425 - Budget Act of 2002); Statutes 2003, Chapter 157 (AB 1765 - Budget Act of 2003); Statutes 2004, Chapter 208 (SB 1113 - Budget Act of 2004)

- Item 12* *Pupil Health Screenings*, 01-PGA-09
Clovis Unified School District, Requestor
Health and Safety Code Sections 324.2 and 324.3
Statutes 1976, Chapter 1208 (AB 4284); Statutes 1991, Chapter 373 (AB 52);
Statutes 1992, Chapter 759 (AB 1248)

B. ADOPTION OF PROPOSED STATEWIDE COST ESTIMATES

- Item 13* *Administrative License Suspension – Per Se*, 98-TC-16
City of Newport Beach, Claimant
Vehicle Code Sections 13202.3, 13353, 13353.1, 13353.2, 14100, 23136,
23137, 23157, 23158.2, 23158.5
Statutes 1989, Chapter 1460 (SB 1623); Statutes 1990, Chapter 431
(SB 1150); Statutes 1992, Chapter 1281 (AB 3580); Statutes 1993, Chapters
899 and 1244 (SB 689 and SB 126); Statutes 1994, Chapter 938 (SB 1295),
and Statutes 1997, Chapter 5 (AB 74)
- Item 14* *Pupil Promotion and Retention*, 98-TC-19
San Diego Unified School District, Claimant
Education Code Sections 37252, 37252.5, 48070 and 48070.5
Statutes of 1998, Chapters 742 and 743, et al. (AB 1626 and AB 1639)
- Item 15* *Comprehensive School Safety Plans*, 98-TC-01 and 99-TC-10
Kern High School District, Claimant
Former Education Code Sections 35294.1, 35294.2, 35294.6, and 35294.8
Statutes 1997, Chapter 736 (SB 187) and Statutes 1999, Chapter 996 (SB 334)
[Amended and Re-numbered as Education Code Sections 32280, 32281,
32282, 32286, 32288 by Statutes 2003, Chapter 828 (SB 719)]

VII. STAFF REPORTS

- Item 16 Chief Legal Counsel's Report (info)
Recent Decisions, Litigation Calendar
- Item 17 Staff Report: Implementation of AB 2856 (info)
- Item 18 Executive Director's Report (info/action)
Workload, Implementation of Legislation, Meetings, and Next Hearing

VIII. PUBLIC COMMENT

IX. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE
SECTIONS 11126 and 17526: (Closed Executive Session may begin at this time or may
begin earlier on this day and reconvene at the end of the meeting.)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as
necessary and appropriate, upon the following matters pursuant to Government Code
section 11126, subdivision (e)(1):

1. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case
Number S109125, in the Supreme Court of the State of California.
CSM Case No. 02-L-02 [*Pupil Expulsions*]
2. *State of California, Department of Finance v. Commission on State Mandates, et al.*,
Case Number 03CS01069 in the Superior Court of the State of California, County of
Sacramento. CSM Case No. 03-L-01 [*Animal Adoption*]
3. *State of California, Department of Finance v. Commission on State Mandates, et al.*,
Case Number 03CS01432 in the Superior Court of the State of California, County of
Sacramento. CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
4. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case
Number 03CS01401 in the Superior Court of the State of California, County of
Sacramento. CSM Case No. 03-L-03 [*Graduation Requirements IRC*]
5. *Castro Valley Unified School District v. Commission on State Mandates, et al.*, Case
Number 03CS01568 in the Superior Court of the State of California, County of
Sacramento. CSM Case No. 03-L-04 [*Graduation Requirements IRC*]
6. *San Jose Unified School District v. Commission on State Mandates, et al.*, Case
Number 03CS01569 in the Superior Court of the State of California, County of
Sacramento. CSM Case No. 03-L-05 [*Graduation Requirements IRC*]
7. *Sweetwater Union High School District v. Commission on State Mandates, et al.*,
Case Number 03CS01570 in the Superior Court of the State of California, County of
Sacramento. CSM Case No. 03-L-06 [*Graduation Requirements IRC*]
8. *Clovis Unified School District v. Commission on State Mandates, et al.*, Case Number
03CS01702 in the Superior Court of the State of California, County of Sacramento.
CSM Case No. 03-L-09 [*Graduation Requirements IRC*]
9. *Grossmont Union High School District v. Commission on State Mandates, et al.*, Case
Number 04CS00028 in the Superior Court of the State of California, County of
Sacramento. CSM Case No. 03-L-10 [*Graduation Requirements IRC*]
10. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number
BS087959, in the Superior Court of the State of California, County of Los Angeles.
CSM Case No. 03-L-11 [*Animal Adoption*]
11. *County of Los Angeles and Los Angeles County Flood Control District v. State of
California, Commission on State Mandates, et al.*, Case Number BS089769, in the

Superior Court of the State of California, County of Los Angeles.
CSM Case No. 03-L-12 [*Transit Trash Receptacles, et al.*]

12. *City of Artesia, et al. v. State of California, Commission on State Mandates, et al.*,
Case Number BS089785, in the Superior Court of the State of California, County of
Los Angeles. CSM Case No. 03-L-13 [*Waste Discharge Requirements*]

To confer with and receive advice from legal counsel, for consideration and action, as
necessary and appropriate, upon the following matter pursuant to Government Code
section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which
presents a significant exposure to litigation against the Commission on State
Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

X. REPORT FROM CLOSED EXECUTIVE SESSION, RECONVENE IN PUBLIC
SESSION

XI. ADJOURNMENT

For information, contact:

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ITEM 11

STAFF ANALYSIS PROPOSED PARAMETERS AND GUIDELINES AMENDMENT

Statutes 1975, Chapter 486
Statutes 1984, Chapter 1459
Statutes 2004, Chapter 208 (Budget Act of 2004)

Mandate Reimbursement Process

EXECUTIVE SUMMARY

The *Mandate Reimbursement Process* program allows local agencies and school districts to be reimbursed for costs incurred in preparing and presenting successful test claims to the Commission on State Mandates (Commission) and submitting reimbursement claims to the State Controller's Office (SCO). Incorrect reduction claims are considered an element of reimbursement claims.

The original parameters and guidelines for this program were adopted on November 20, 1986. Each year, the Commission amends these parameters and guidelines to incorporate the most recently enacted state budget act. In addition, this year Commission staff proposes to add language to reflect a change in the law effected by Proposition 1A, adopted by the electorate on November 2, 2004, which concerns the suspension of unfunded mandates affecting a city, county, city or county, or special district.

Staff Analysis

Commission staff prepared the proposed annual amendment of the Mandate Reimbursement Process parameters and guidelines and requested comments.¹ No comments were received. Staff made non-substantive, technical changes for purposes of consistency with recently adopted language for parameters and guidelines.

Staff Recommendation

Staff recommends that the Commission adopt the proposed amended parameters and guidelines, as modified by Commission staff, beginning on page 5.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

¹ Exhibit A.

Chronology

9/25/03	Commission adopted the Amended Parameters and Guidelines
7/31/04	2004-2005 state budget enacted (SB 1113, Stats. 2004, ch. 208)
10/1/04	Commission staff issued the draft staff analysis and proposed annual amendment of the parameters and guidelines
11/02/04	Voters approve Proposition 1A
11/15/04	Commission staff issued the final staff analysis and proposed annual amendment of the parameters and guidelines

Summary of the Mandate

On March 27, 1986, the Commission determined that Statutes 1975, chapter 486, and Statutes 1984, chapter 1459 imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program as well as to obtain reimbursement for the costs of mandated programs.

The *Mandate Reimbursement Process* program allows local agencies and school districts to be reimbursed for costs incurred in preparing and presenting successful test claims to the Commission on State Mandates (Commission) and submitting reimbursement claims to the State Controller's Office (SCO). Incorrect reduction claims are considered an element of reimbursement claims.

The original parameters and guidelines for this program were adopted on November 20, 1986. Each year, the Commission amends these parameters and guidelines to incorporate the most recently enacted state budget act. This year, Commission staff proposes to add language to reflect a change in the law effected by Proposition 1A, adopted by the electorate on November 2, 2004, which concerns the suspension of unfunded mandates affecting a city, county, city or county, or special district.

Since 1995, the state budget act has included supplemental language in the support appropriations for the SCO and the Commission. This language addresses local reimbursement for the costs of contracting with an independent contractor. The Commission adopted Appendix A to comply with the supplemental language.

Each year, the Commission amends these parameters and guidelines and Appendix A to incorporate the most recently enacted budget act. However, the amendment does not include any other revisions enacted by subsequent legislation. Subsequent statutory revisions must be submitted as new test claims, and approved by the Commission before being included in parameters and guidelines.²

² For example, Statutes 1999, chapter 643 (AB 1679) added new provisions to allow the Commission to accept more than one test claim on the same statute or executive order. These new provisions are not reimbursable under the *Mandates Reimbursement Process* parameters and guidelines.

Discussion

Commission staff prepared the proposed annual amendment of the *Mandate Reimbursement Process* parameters and guidelines to incorporate the 2004-2005 Budget Act. Staff also included an amendment to account for situations where the state constitution requires the suspension of unfunded mandates affecting a city, county, city or county, or special district, as set forth in Article XIII B, section 6, subdivision (b).³ Staff also made technical changes for purposes of consistency with adopted language for parameters and guidelines.

Staff Recommendation

Staff recommends that the Commission adopt the proposed amended parameters and guidelines, as modified by Commission staff, beginning on page 5.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

³ Proposition 1A, enacted by voters on November 2, 2004.

AMENDED PARAMETERS AND GUIDELINES

Statutes 1975, Chapter 486

Statutes 1984, Chapter 1459

Statutes 20043, Chapter ~~1577~~208 (Budget Act of 20034)

Mandate Reimbursement Process

[For fiscal year 20034-20045, these parameters and guidelines are amended, pursuant to the requirements of: provision 8 of Item 0840-001-0001, and provision 1 of Item 8885-001-0001 of the Budget Act of 20034 to include Appendix A.]

Adopted: November 20, 1986

First Amendment Adopted: March 26, 1987

Second Amendment Adopted: October 26, 1995

Third Amendment Adopted: January 30, 1997

Fourth Amendment Adopted: September 25, 1997

Fifth Amendment Adopted: October 29, 1998

Sixth Amendment Adopted: September 30, 1999

Seventh Amendment Adopted: September 28, 2000

Eighth Amendment Adopted: October 25, 2001

Ninth Amendment Adopted: February 27, 2003

Tenth Amendment Adopted: September 25, 2003

Eleventh Amendment Proposed for Adoption: December 9, 2004

I. SUMMARY OF THE MANDATE

Statutes 1975, chapter 486, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the state. In addition, Statutes 1975, chapter 486 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Statutes 1984, chapter 1459, created the Commission on State Mandates (Commission), which replaced the Board of Control with respect to hearing mandate cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by article XIII B, section 6 of the California Constitution for state mandates under Government Code section 17552.

Together these laws establish the process by which local agencies receive reimbursement for state-mandated programs. As such, they prescribe the procedures that must be followed before mandated costs are recognized. They also dictate reimbursement activities by requiring local agencies and school districts to file claims according to instructions issued by the Controller.

On March 27, 1986, the Commission determined that local agencies and school districts incurred "costs mandated by the state" as a result of Statutes 1975, chapter 486, and Statutes 1984, chapter 1459. Specifically, the Commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program as well as to obtain reimbursement for the costs of mandated programs.

II. ELIGIBLE CLAIMANTS

Any local agency as defined in Government Code section 17518, or school district as defined in Government Code section 17519, which incurs increased costs as a result of this mandate is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

- (a) A local agency or school district may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).
- (b) A local agency or school district may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
- (c) In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between October 15 and January 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Reimbursable actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561 (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

A. Scope of Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur state-mandated costs. The purpose of this test claim is to establish that local governments cannot be made financially whole unless all state mandated costs -- both direct and indirect -- are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of state-imposed mandates, all resulting costs are recoverable.

B. Reimbursable Activities

1. Test Claims

All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including those same costs of an unsuccessful test claim if an adverse Commission ruling is later reversed as a result of a court order. These activities include, but are not limited to, the following: preparing and presenting test claims,

developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions. The costs of all successful test claims are reimbursable.

Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and indirect costs.

2. Reimbursement Claims

All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local agencies and school districts, unless the Legislature has suspended the operation of mandate pursuant to state law. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and indirect costs.

Incorrect Reduction Claims are considered to be an element of the reimbursement process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

3. Training

a. Classes

Include the costs of classes designed to assist the claimant in identifying and correctly preparing state-required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate. (One-time activity per employee.)

b. Commission Workshops

Participation in workshops convened by the Commission is reimbursable. Such costs include, but are not limited to, salaries and benefits, transportation, and per diem. This does not include reimbursement for participation in rulemaking proceedings.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours).

Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contract Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Reporting

1. Local Agencies

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services

distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the following methodologies:

- a. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
- b. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

2. School Districts

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central

governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

3. County Offices of Education

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

4. Community College Districts

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimant experiences in the same program as a direct result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, services fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

¹ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

(Continue to Appendix A)

PARAMETERS AND GUIDELINES

Statutes 1975, Chapter 486
Statutes 1984, Chapter 1459

APPENDIX A

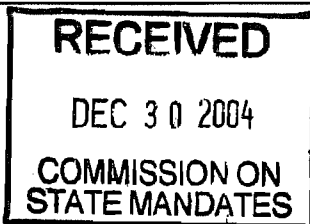
Limitation on Reimbursement for Independent Contractor Costs During Fiscal Years 20034-20045²

- A. If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.
- The maximum amount of reimbursement provided in subdivision (a) for an independent contractor may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without incurring the additional costs claimed by the local agency or school district.
- B. Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable within the limitations imposed under A. above. Provide copies of the invoices and/or claims that were paid. For the preparation and submission of claims pursuant to Government Code sections 17561 and 17564, submit an estimate of the actual costs that would have been incurred for that purpose if performed by employees of the local agency or school district; this cost estimate is to be certified by the governing body or its designee.

If reimbursement is sought for independent contractor costs that are in excess of [Test (1)] ten percent of the claims prepared and submitted by the independent contractor or [Test (2)] the actual costs that necessarily would have been incurred for that purpose if performed by employees or the local school district, appropriate documentation must be submitted to show that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district. Appropriate documentation includes the record of dates and time spent by staff of the contractor for the preparation and submission of claims on behalf of the local agency or school district, the contractor's billed rates, and explanation on reasons for exceeding Test (1) and/or Test (2). In the absence of appropriate documentation,

² The limitation added by the Budget Act of 20034, Statutes 20034, chapter-157208, in Item 0840-001-0001, Provision 8, and in Item 8885-001-0001, Provision 1, is shown as part A. of this Appendix.

reimbursement is limited to the lesser of Test (1) and/or Test (2). No reimbursement shall be permitted for the cost of contracted services without the submission of an estimate of actual costs by the local agency or school district.



ORIGINAL

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PUBLIC HEARING

COMMISSION ON STATE MANDATES

--oOo--

TIME: 9:34 a.m.

DATE: Thursday, December 9, 2004

PLACE: Commission on State Mandates
State Capitol, Room 126
Sacramento, California

--oOo--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--oOo--

Daniel P. Feldhaus

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ANNE SHEEHAN
(Commission Chair)
Representative for TOM CAMPBELL
Director
Department of Finance

JOHN HIBER
Representative for PHILIP ANGELIDES
State Treasurer

WALTER BARNES
Representative for STEVE WESTLY
State Controller

JAN BOEL
Acting Director
State Office of Planning and Research

JOHN S. LAZAR
City Council Member
City of Turlock

COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director

PAUL M. STARKEY
Chief Legal Counsel

CATHY CRUZ
Program Analyst

ERIC FELLER
Commission Counsel

NANCY PATTON
Assistant Executive Director

KATHERINE TOKARSKI
Commission Counsel

I N D E X
(continued)

<u>Proceedings</u>	<u>Page</u>
V. Hearings and Decisions, Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7	
A. Test Claims and Proposed Statements of Decision	
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Item 7 <i>Lifeguard Skin Cancer Presumption (K-14)</i> , 02-TC-16 Santa Monica Community College District	46
Item 8 Proposed Statement of Decision: <i>Lifeguard Skin Cancer Presumption (K-14)</i> , 02-TC-16, as described in Item 7	49
Item 9 <i>Domestic Violence Arrests and Victim Assistance</i> 98-TC-14 County of Los Angeles	51
Item 10 Proposed Statement of Decision: <i>Domestic Violence Arrests and Victim Assistance</i> 98-TC-14, as described in Item 9	63
VI. Informational Hearing Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 8	
A. Adoption of Amendments to Parameters and Guidelines	
Item 11 <i>Mandate Reimbursement Process</i> , CSM-4485 (Consent item, See IV above)	15

1 with and receive advice from legal counsel for
2 consideration and action, as necessary and appropriate,
3 upon the filing in the Los Angeles County Superior Court
4 titled case number BS091246, CSAC-Excess Insurance
5 Authority versus Commission on State Mandates, and to
6 confer with and receive advice from legal counsel
7 regarding potential litigation.

8 Paula, will you introduce the next item, please?

9 MS. HIGASHI: The next item on our agenda is the
10 proposed consent calendar. And you should have that
11 before you. It's a green sheet.

12 CHAIR SHEEHAN: Right. We have a revised consent
13 calendar?

14 MS. HIGASHI: Yes. Our consent calendar now
15 consists of Item 11 and Item 13. Item 14 has been
16 postponed. And the other matters that originally had
17 been proposed, will be called up in order.

18 CHAIR SHEEHAN: Okay. So are there any objections
19 to the newly-proposed consent calendar?

20 *(No audible response was heard.)*

21 CHAIR SHEEHAN: Okay, do I have a motion?

22 MEMBER LAZAR: I'll move adoption.

23 MEMBER HIBER: Second.

24 CHAIR SHEEHAN: All those in favor of adopting the
25 consent calendar?

REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were duly reported by me at the time and place herein specified;

That the testimony of said witnesses was reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In witness whereof, I have hereunto set my hand on 30th of December 2004.



DANIEL P. FELDHAUS
California CSR #6949
Registered Diplomate Reporter
Certified Realtime Reporter

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
December 9, 2004

Present: Chairperson Anne Sheehan
Representative of the Director of the Department of Finance
Member John Hiber
Representative of the State Treasurer
Member Walter Barnes
Representative of the State Controller
Member Jan Boel
Acting Director of the Office of Planning and Research
Member John Lazar
City Council Member

Vacant: Local Elected Official
Public Member

CALL TO ORDER AND ROLL CALL

Vice Chairperson Hiber called the meeting to order at 9:34 a.m.

The Commission conducted an election because the chairperson position was vacant. Member Boel nominated Mr. Tom Campbell, the Director of the Department of Finance, as Chairperson. Mr. Campbell was unanimously elected.

APPROVAL OF MINUTES

Item 1 September 30, 2004

Upon motion by Member Hiber and second by Member Boel, the minutes were unanimously adopted.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

Chairperson Sheehan announced that the Commission would meet in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the filing in the Los Angeles County Superior Court, titled case number BS091246, *CSAC-Excess Insurance Authority v. the Commission on State Mandates*, which was served on the Commission on December 2, 2004, and to confer with and receive advice from legal counsel regarding potential litigation.

The Commission reconvened in public session at 9:51 a.m.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Sheehan reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the filing in the Los Angeles County Superior Court, titled case number BS091246, *CSAC-Excess Insurance Authority v. the Commission on State Mandates*, and to confer with and receive advice from legal counsel regarding potential litigation.

PROPOSED CONSENT CALENDAR

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES AND AMENDMENTS

- Item 11 *Mandate Reimbursement Process*, CSM-4485
Statutes 1975, Chapter 486 (AB 1375); Statutes 1984, Chapter 1459 (SB 2337); Statutes 1995, Chapter 303 (AB 903 - Budget Act of 1995); Statutes 1996, Chapter 162 (SB 1393 - Budget Act of 1996); Statutes 1997, Chapter 282 (AB 107 - Budget Act of 1997); Statutes 1998, Chapter 324 (AB 1656 - Budget Act of 1998); Statutes 1999, Chapter 50 (SB 160 - Budget Act of 1999); Statutes 2000, Chapter 52 (AB 1740 - Budget Act of 2000); Statutes 2001, Chapter 106 (SB 739 - Budget Act of 2001); Statutes 2002, Chapter 379 (AB 425 - Budget Act of 2002); Statutes 2003, Chapter 157 (AB 1765 - Budget Act of 2003); Statutes 2004, Chapter 208 (SB 1113 - Budget Act of 2004)

ADOPTION OF PROPOSED STATEWIDE COST ESTIMATE

- Item 13 *Administrative License Suspension – Per Se*, 98-TC-16
City of Newport Beach, Claimant
Vehicle Code Sections 13202.3, 13353, 13353.1, 13353.2, 14100, 23136, 23137, 23157, 23158.2, 23158.5
Statutes 1989, Chapter 1460 (SB 1623); Statutes 1990, Chapter 431 (SB 1150); Statutes 1992, Chapter 1281 (AB 3580); Statutes 1993, Chapters 899 and 1244 (SB 689 and SB 126); Statutes 1994, Chapter 938 (SB 1295), and Statutes 1997, Chapter 5 (AB 74)

Member Lazar moved for adoption of the consent calendar, which consisted of items 11 and 13. With a second by Member Hiber, the consent calendar was unanimously adopted.

APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181, SUBDIVISION (c)

- Item 2 Staff Report on Appeals Related To Current Agenda Items (if necessary)

No appeals were filed.

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

Paula Higashi, Executive Director, swore the parties and witnesses participating in the hearing of agenda items 3 through 10.

TEST CLAIMS AND PROPOSED STATEMENTS OF DECISION

Item 3 *Lower Back Injury Presumption for Law Enforcement*, 01-TC-25
CSAC-EIA & County of Tehama, Claimants
Labor Code Section 3213.2
Statutes 2001, Chapter 834 (SB 424)

Katherine Tokarski, Commission Counsel, presented this item. She stated that in 2001, the Legislature added Labor Code section 3213.2. For the first time, certain local agency and state peace officers with at least five years of full-time service who wore a duty belt were granted a rebuttable presumption that lower back impairment developing or manifesting itself in the peace officer shall be presumed to arise out of and in the course of employment. Employers may offer evidence disputing the presumption under the statute.

The claimants allege that the legislation causes an increase in workers' compensation claims for lower back injury and decreases the possibility that any defenses can be raised by the employer to defeat the claims. Thus, the claimants believe that the total costs of these claims, from initial presentation to ultimate resolution, are reimbursable.

Ms. Tokarski noted that CSAC-EIA is a joint powers authority established by contracting counties for insurance and risk management purposes. She added that it does not employ peace officers and is not a party to a workers' compensation claim filed by a peace officer against the local agency employer. Moreover, CSAC-EIA does not have authority to raise tax revenue and is not bound by the spending limitations of article XIII B. Further, Ms. Tokarski indicated that the claimants submitted a late filing requesting an indefinite postponement of the test claim hearing until the litigation on the *Cancer Presumption for Law Enforcement and Firefighters* test claim was resolved.

Staff recommended that the Commission deny the test claim, finding that CSAC-EIA does not have standing and is not a proper claimant for this test claim, and that Labor Code section 3213.2 is not subject to article XIII B, section 6 of the California Constitution because it does not mandate a new program or higher level of service on local agencies.

Parties were represented as follows: Juliana Gmur, on behalf of the claimants; Gina Dean, with the CSAC-Excess Insurance Authority; and Susan Geanacou and Jaci Thompson, with the Department of Finance.

Ms. Gmur stated that before the Commission was one of six workers' compensation presumption test claims. The first, which was filed and heard in May, was denied and is now the subject of a writ. She indicated that although it involved a different statute, the legal issues were identical in each of the claims. Therefore, she asked the Commission whether it would like to continue with the proceeding or wait for the court's review in order to possibly resolve all six matters at once.

Member Boel made a motion to proceed with the hearing.

Member Lazar requested the chief legal counsel's recommendation. Mr. Paul Starkey requested the Commission to ask the other parties' positions.

Ms. Geanacou stated that the Department of Finance had no particular position on the late filing. She indicated that they supported the Commission moving forward with the hearing.

Mr. Starkey stated that under the statute and regulations, the Commission had the discretion to decide how to proceed in this matter and that there was no legal impediment to proceeding.

Member Hiber seconded Member Boel's motion to proceed. The motion carried unanimously.

Ms. Gmur addressed two issues – whether CSAC-EIA was a proper claimant, and whether a reimbursable state mandate existed. As to the first issue, she argued that the Commission staff's reliance on a redevelopment agency case was misplaced. She stated that there was no existing case law on joint powers authorities and whether they would be proper parties. Rather she argued that the statute, on its face, says that the joint powers authority is a proper party as a special district that can file a test claim.

Regarding the second issue, Ms. Gmur provided background about workers' compensation law. She asserted that staff relied on only the second sentence of the statute, which involves the rebuttable presumption. She argued that it was the first sentence, which states that "it shall be presumed..." that creates the mandate, and the second sentence limits the mandate but does not cancel it out. She further argued that the *Kern High School* and *City of Merced* cases were not controlling.

Member Lazar requested the claimant respond to the Department of Industrial Relations position that local governments are not required to accept all workers' compensation claims. Ms. Gmur reiterated that the ability to defend against the presumption was a limitation that does not negate the existence of the mandate.

Chairperson Sheehan asked that Ms. Gmur address the other two points made by the Department of Industrial Relations. Ms. Gmur responded that the test claim legislation was a new program because it created a presumption that otherwise did not exist, and even though there was no shift of a financial burden from the states to local governments, a mandate can still exist.

Ms. Geanacou supported the staff analysis.

Member Lazar asked Ms. Tokarski to respond to the claimant's comments. Ms. Tokarski explained that not every piece of statutory language creates a new program or higher level of service. In this case, the statute is new, but the presumption is part of the underlying claim for an injury occurring on the job, which predates the presumption. Therefore, staff found that the excess costs that would result from a presumption in favor of the employee are not reimbursable costs because the presumption itself is not a new program or higher level of service as defined by the courts. Moreover, Ms. Tokarski indicated that the "shall" language was not referring to something that local agencies must do proactively, but rather that the workers' compensation courts shall presume, for purposes of the claims, that the injury occurred on the job.

Member Barnes made a motion to adopt the staff recommendation. With a second by Member Boel, the motion carried unanimously.

Item 4 Proposed Statement of Decision: *Lower Back Injury Presumption for Law Enforcement*, 01-TC-25.

Katherine Tokarski, Commission Counsel, presented this item. She stated that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision. Staff recommended that the Commission adopt the proposed Statement of Decision. She noted that minor changes to reflect the hearing testimony and vote count would be included with the final decision.

Member Lazar made a motion to adopt the proposed Statement of Decision. With a second by Member Boel, the motion carried unanimously.

Item 5 *Skin Cancer Presumption for Lifeguards*, 01-TC-27
City of Newport Beach, Claimant
Labor Code Section 3212.11
Statutes 2001, Chapter 846 (AB 663)

Katherine Tokarski, Commission Counsel, presented this item. She stated that in 2001, the Legislature added Labor Code section 3212.11. For the first time, publicly-employed lifeguards were granted a rebuttable presumption that skin cancer developing or manifesting itself during or for a defined period immediately following employment shall be presumed to arise out of and in the course of employment. Employers may offer evidence disputing the presumption under the statute.

The claimant, City of Newport Beach, alleges that the legislation causes an increase in workers' compensation claims for skin cancer and decreases the possibility that any defenses can be raised by the employer to defeat the claims. Thus, the claimant believes that the total costs of these claims, from initial presentation to ultimate resolution, are reimbursable.

Ms. Tokarski indicated that the claimant submitted a late filing requesting an indefinite postponement of the test claim hearing until pending litigation was resolved.

Staff recommended that the Commission deny the test claim, finding Labor Code section 3212.11 is not subject to article XIII B, section 6 of the California Constitution because it does not mandate a new program or higher level of service on local agencies.

Parties were represented as follows: Juliana Gmur and Glen Everroad, on behalf of the City of Newport Beach; and Susan Geanacou and Jaci Thompson, with the Department of Finance.

Ms. Gmur stated that before the Commission was one of six workers' compensation presumption test claims. The first, which was filed and heard in May, was denied and is now the subject of a writ. Therefore, she asked the Commission whether it would like to continue with the proceeding or wait for the court's review in order to possibly resolve all six matters at once.

Member Lazar stated that he would like to move forward with the hearing. Member Boel agreed and Chairperson Sheehan indicated that there were no objections.

Mr. Starkey explained that procedurally, counsel may incorporate her comments from the previous item and apply them to this case if, in fact, the type of testimony and discussion are exactly the same. Ms. Gmur stated her hesitation to simply incorporate her comments because this case involved a different claimant, a different source of a possible writ.

Member Lazar asked Mr. Everroad for his thoughts. Mr. Everroad deferred to his counsel on the issue. Member Lazar maintained that he would like the item to proceed, and that the Commission should allow the claimant to state their comments into the record. The members did not object.

Ms. Gmur provided background about workers' compensation law. She noted that staff points to the *City of Merced* case, which was decided on the avoidance doctrine. However, she argued that in the present case, the employer has no way to avoid the mandate. Therefore, she requested that the Commission find a reimbursable state mandate.

Ms. Geanacou supported the staff analysis.

Member Boel made a motion to adopt the staff analysis. With a second by Member Hiber, the motion carried unanimously.

Item 6 Proposed Statement of Decision: *Skin Cancer Presumption for Lifeguards*,
01-TC-27.

Katherine Tokarski, Commission Counsel, presented this item. She stated that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision. Staff recommended that the Commission adopt the proposed Statement of Decision. She noted that minor changes to reflect the hearing testimony and vote count would be included with the final decision.

Member Lazar made a motion to adopt the proposed Statement of Decision. With a second by Member Barnes, the motion carried unanimously.

Item 7 *Lifeguard Skin Cancer Presumption (K-14)*, 02-TC-16
Santa Monica Community College District, Claimant
Labor Code Section 3212.11
Statutes 2001, Chapter 846 (AB 663)

Katherine Tokarski, Commission Counsel, presented this item. She noted that the Commission received a local agency test claim on *Skin Cancer Presumption for Lifeguards* in 2002. On February 27, 2003, a second test claim on Labor Code section 3212.11 was filed by the Santa Monica Community College District, alleging a reimbursable state mandate imposed on kindergarten through grade 14 school districts. However, the two claims were not consolidated.

Ms. Tokarski stated that the activities or costs alleged by the claimant include all of the costs associated with the payment of claims caused by presumption, or payment of the additional costs of insurance premiums to cover such claims; physical exams to screen lifeguard applicants for preexisting skin cancer; and training lifeguards to take precautionary measures to prevent skin cancer on the job.

Staff recommended that the Commission deny the test claim, and find that Labor Code section 3212.11 is not subject to article XIII B, section 6 of the California Constitution because it does not mandate a new program or higher level of service on school districts.

Parties were represented as follows: Keith Petersen, on behalf of the claimant; and Susan Geanacou and Jaci Thompson, with the Department of Finance.

Mr. Petersen stood by the administrative record for the test claim.

Ms. Geanacou supported the staff analysis.

Member Barnes made a motion to adopt the staff recommendation. With a second by Member Boel, the motion carried unanimously.

Item 8 Proposed Statement of Decision: *Lifeguard Skin Cancer Presumption (K-14)*,
02-TC-16.

Katherine Tokarski, Commission Counsel, presented this item. She stated that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision. Staff recommended that the Commission adopt the proposed Statement of Decision. She noted that minor changes to reflect the hearing testimony and vote count would be included with the final decision.

Member Lazar made a motion to adopt the proposed Statement of Decision. With a second by Member Boel, the motion carried unanimously.

Item 9 *Domestic Violence Arrests and Victim Assistance*, 98-TC-14
County of Los Angeles, Claimant
Penal Code Sections 264.2, 13701, and 13519
Statutes 1998, Chapters 698, 701 & 702 (AB 1201, AB 2172, AB 2177)

Eric Feller, Commission Counsel, presented this item. Mr. Feller outlined the requirements of the test claim statutes:

1. One test claim statute amended Penal Code section 264.2 to add two crimes for which a victim of domestic violence receives a card: victims of spousal battery, and victims of corporal injury on a spouse or other specified victim.
2. Another statute amended Penal Code section 13519 to add the signs of domestic violence to the Commission on Peace Officer Standards and Training's domestic violence training course and response guidelines.
3. A third statute amended Penal Code section 13701, law enforcement's Domestic Violence policy, to add transportation to a hospital and safe passage out of a victim's residence, and providing contact information for the California Victims Compensation Program. Moreover, this statute adds to the card the phone number or county hotlines for battered women's shelters and a statement that domestic violence or assault by a person known to the victim is a crime. Further, this statute amends subdivision (b) by adding orders issued by other states, tribes, or territories to a list of enforceable protective orders in the domestic violence arrest policy.

Staff found that Penal Code sections 13701, subdivisions (c)(9)(D) and (c)(9)(H), and section 264.2, subdivision (a), as amended by the test claim statutes, impose a reimbursable state-mandated program for specific activities.

Parties were represented as follows: Leonard Kaye, on behalf of the County of Los Angeles; and Susan Geanacou and Brendan Murphy, with the Department of Finance.

Mr. Kaye concurred with the reimbursable activities as identified by Mr. Feller. However, because domestic violence was the subject of numerous test claims, he commented that it would be exceptionally difficult for anyone to ascertain what exactly was reimbursable under a particular program for a particular fiscal year. As a practical matter, Mr. Kaye believed that the parameters and guidelines must relate back to the Statement of Decision. Therefore, he announced his intent to include clarifying language regarding suspended statutes into the proposed parameters and guidelines to provide guidance to the claimants and auditors.

Mr. Murphy concurred with the staff analysis.

Mr. Feller disagreed with Mr. Kaye. He stated that the activities Mr. Kaye was referring to were either encompassed in a prior domestic violence test claim or were discretionary. He also clarified that only one program involving Statutes 1984, chapter 1609 and Statutes 1985, chapter 668 was suspended through fiscal year 2002-2003.

Ms. Higashi asked if the claimant was proposing to consolidate parameters and guidelines. Mr. Kaye said no and that his intent was just to indicate that should a suspension not be enforced in a particular year, that those activities would be mandated.

Member Barnes noted that the consideration of what goes into the parameters and guidelines is a separate issue, and would be addressed at that phase. He also suggested that in the Controller's

claiming instructions there be some references to the other programs. He encouraged the claimant to contact the Division of Accounting and Reporting to work out the issues.

Member Boel made a motion to adopt the staff analysis. With a second by Member Lazar, the motion carried unanimously.

Item 10 Proposed Statement of Decision: *Domestic Violence Arrests and Victim Assistance*, 98-TC-14.

Eric Feller, Commission Counsel, presented this item. He stated that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision. Staff recommended that the Commission adopt the proposed Statement of Decision. He noted that minor changes to reflect the hearing testimony and vote count would be included with the final decision.

Member Hiber made a motion to adopt the proposed Statement of Decision. With a second by Member Boel, the motion carried unanimously.

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES AND AMENDMENTS

Item 12 *Pupil Health Screenings*, 01-PGA-09
Clovis Unified School District, Requestor
Health and Safety Code Sections 324.2 and 324.3
Statutes 1976, Chapter 1208 (AB 4284); Statutes 1991, Chapter 373 (AB 52);
Statutes 1992, Chapter 759 (AB 1248)

Cathy Cruz, Program Analyst, presented this item. She stated that on May 6, 2002, the Clovis Unified School District requested an amendment to the original parameters and guidelines in order to establish a uniform cost allowance for the *Pupil Health Screenings* program. Staff proposed separate uniform allowances for each reimbursable component to limit the rates to the applicable portion of the population of enrolled kindergarteners and new first-grade pupils for each component. The proposed allowances cover all the direct and indirect costs of performing the activities described in the reimbursable activities section. Moreover, Ms. Cruz explained that the proposed allowances were based on the Controller's claims data for fiscal year 1998-1999 through 2000-2001.

Ms. Cruz also stated that on September 29, 2004, Governor Schwarzenegger signed Assembly Bill 2855, which, operative January 1, 2005, eliminates the statistical reporting requirement. Accordingly, staff limited the reimbursement period for this activity.

The final staff analysis for this item was issued on November 4, 2004. Ms. Cruz indicated that no comments were received. However, the Department of Finance requested that this item be removed from the consent calendar so that they could read their comments into the record. Staff recommended that the Commission adopt the proposed amendment and authorize staff to make any non-substantive technical corrections following the hearing.

Parties were represented as follows: Nelson Cayago, with the Department of Finance.

Mr. Cayago stated that the Department of Finance preferred that uniform costs be based on audited claims rather than unaudited claims.

Ms. Cruz responded that the Department of Finance previously raised this argument, which staff addressed in the analysis. She stated that use of unaudited claims had been the practice even when claims were requested to be placed in the State Mandates Apportionment System. She added that unaudited claims were the best information available.

Member Barnes commented that there was insufficient time to go out and conduct field audits of all claims prior to developing a cost estimate, given the thousands of claims that are filed. He stated that as a conceptual idea, we would all like to see estimates based on audited claims. However, as a practical matter, it just was not feasible. Chairperson Sheehan agreed.

Member Hiber made a motion to adopt the staff recommendation. With a second by Member Lazar, the motion carried unanimously.

ADOPTION OF PROPOSED STATEWIDE COST ESTIMATES

- Item 14 *Pupil Promotion and Retention*, 98-TC-19
San Diego Unified School District, Claimant
Education Code Sections 37252, 37252.5, 48070 and 48070.5
Statutes 1998, Chapters 742 and 743, et al. (AB 1626 and AB 1639)

Item 14 was postponed.

Member Barnes asked what the reason was for postponing the item. Ms. Higashi clarified that one of the claimant representatives indicated that there was a plan to amend claims previously filed, which would affect the proposed estimate.

- Item 15 *Comprehensive School Safety Plans*, 98-TC-01 and 99-TC-10
Kern High School District, Claimant
Former Education Code Sections 35294.1, 35294.2, 35294.6, and 35294.8
Statutes 1997, Chapter 736 (SB 187) and Statutes 1999, Chapter 996 (SB 334)
[Amended and Re-numbered as Education Code Sections 32280, 32281, 32282, 32286, 32288 by Statutes 2003, Chapter 828 (SB 719)]

Nancy Patton, Assistant Executive Director, presented this item. She noted that the test claim legislation requires each school district and county office of education to develop, adopt, and update comprehensive school safety plans that are relevant to the safety needs of each school.

Ms. Patton explained that staff developed the proposed statewide cost estimate using summary claims data submitted by the claimants and compiled by the Controller's Office. For fiscal years 1997-1998 through 2002-2003, 381 school districts claimed costs. The proposed estimate included eight fiscal years for a total of over \$37 million.

The final staff analysis for this item was issued on November 22, 2004. Ms. Patton indicated that no comments were filed on the proposed estimate. However, the Department of Finance requested that the item be removed from the consent calendar so that they could read their concerns regarding the methodology into the record. Staff recommended that the Commission adopt the proposed estimate.

Parties were represented as follows: Nelson Cayago and Matt Aguilera, with the Department of Finance; Dr. Carol Berg, with Education Cost Mandated Network; and Art Palkowitz, with the

San Diego Unified School District.

Mr. Cayago stated that the Department of Finance preferred that the statewide cost estimate be based on audited claims rather than unaudited claims.

Dr. Berg requested that the Department of Finance's application to remove an item from the consent calendar at the last minute when they do not submit written comments be denied in the future. Mr. Palkowitz agreed.

Mr. Aguilera explained that they were just taking the opportunity to articulate their concerns via the public hearing.

Dr. Berg argued that they should follow the protocol that the claimants were required to follow, which is to file written comments in a proper and timely manner.

Chairperson Sheehan appreciated the comments and indicated that the Commission would take them into consideration.

Member Lazar inquired what was a timely time frame. Mr. Starkey responded that there were time frames for various proceedings. He suggested that if a party objects to a scheduled action, that they notify the Executive Director right away.

Ms. Higashi noted Ms. Patton's statement that no party filed comments during the normal comment period for this matter.

Mr. Aguilera maintained that although the Department of Finance did not file comments, it was just continuing to articulate its same concerns.

Chairperson Sheehan suggested that they work to submit comments for the record so that the Department of Finance's position is reflected.

Member Lazar made a motion to adopt the staff recommendation. With a second by Member Boel, the motion carried unanimously.

STAFF REPORTS

Item 16 Chief Legal Counsel's Report (info) Recent Decisions, Litigation Calendar

Paul Starkey, Chief Legal Counsel, reported that there was one new filing – the *CSAC-Excess Insurance Authority* case. There were no recent decisions to report.

Regarding the litigation calendar, Mr. Starkey stated that the *County of Los Angeles and Los Angeles County Flood Control District* case and the *City of Artesia* case have been consolidated and will appear as one agenda item in the future. There will be a status conference on January 31, 2005.

Item 17 Staff Report: Implementation of AB 2856 (info)

Nancy Patton, Assistant Executive Director, reported that the governor signed Assembly Bill 2856 on September 29, 2004. Since that time, the Commission staff began implementing the provisions of the bill:

- The first workshop was conducted on December 8 with the Department of Finance, State Controller's Office, Department of Education, and numerous claimant representatives.
- A second workshop is planned for January 27, 2005.

6. *San Jose Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01569 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-05 [*Graduation Requirements IRC*]
7. *Sweetwater Union High School District v. Commission on State Mandates, et al.*, Case Number 03CS01570 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-06 [*Graduation Requirements IRC*]
8. *Clovis Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01702 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-09 [*Graduation Requirements IRC*]
9. *Grossmont Union High School District v. Commission on State Mandates, et al.*, Case Number 04CS00028 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-10 [*Graduation Requirements IRC*]
10. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS087959, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-11 [*Animal Adoption*]
11. *County of Los Angeles and Los Angeles County Flood Control District v. State of California, Commission on State Mandates, et al.*, Case Number BS089769, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-12 [*Transit Trash Receptacles, et al.*]
12. *City of Artesia, et al. v. State of California, Commission on State Mandates, et al.*, Case Number BS089785, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-13 [*Waste Discharge Requirements*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee.

Hearing no further comments, Chairperson Sheehan adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Sheehan reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

Regarding the 2005 hearing schedule, Member Barnes suggested an early December hearing rather than a November hearing. The other members agreed. Ms. Higashi stated that she would check with the parties and report back to the Commission.

Hearing no further business, and upon motion by Member Boel and second by Member Lazar, Chairperson Sheehan adjourned the meeting at 11:31 a.m.


PAULA HIGASHI
Executive Director

COMMISSION ON STATE MANDATES

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SACRAMENTO, CA 95814
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December 10, 2004

Ms. Ginny Brummels
State Controller's Office
Division of Accounting and Reporting
3301 C Street, Suite 501
Sacramento, CA 95816

And Affected State Agencies and Interested Parties (See Enclosed Mailing List)

Re: Amended Parameters and Guidelines
Mandate Reimbursement Process, CSM-4485
Statutes 1975, Chapter 486
Statutes 1984, Chapter 1459
Statutes 2004, Chapter 208

Dear Ms. Brummels:

On December 9, 2004, the Commission on State Mandates adopted the enclosed amended parameters and guidelines.

If you have any questions, please contact Tina Poole at (916) 323-8220.

Sincerely,

A handwritten signature in cursive script that reads 'Paula Higashi'.

PAULA HIGASHI
Executive Director

Enclosure

MAILED: ✓ FAXED: ✓
DATE: 12/10/04 INITIAL: 8201-
CHRON: ✓ FILE: ✓
WORKING BINDER: ✓

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE AMENDMENT TO PARAMETERS
AND GUIDELINES ON:

Statutes 1975, Chapter 486; Statutes 1984,
Chapter 1459; Statutes 1995, Chapter 303
(Budget Act of 1995); Statutes 1996, Chapter
162 (Budget Act of 1996); Statutes 1997,
Chapter 282 (Budget Act of 1997); Statutes
1998, Chapter 324 (Budget Act of 1998);
Statutes 1999, Chapter 50 (Budget Act of
1999); Statutes 2000, Chapter 52 (Budget Act
of 2000); Statutes 2001, Chapter 106 (Budget
Act of 2001); Statutes 2002, Chapter 379
(Budget Act of 2002); Statutes 2003, Chapter
1577 (Budget Act of 2003); Statutes 2004,
Chapter 208 (Budget Act of 2004)

No. CSM-4485

Mandate Reimbursement Process

ADOPTION OF AMENDMENT TO
PARAMETERS AND GUIDELINES
PURSUANT TO GOVERNMENT CODE
SECTION 17557 AND TITLE 2,
CALIFORNIA CODE OF REGULATIONS,
SECTIONS 1183.2 AND 1185.3.

(Adopted on December 9, 2004)

AMENDED PARAMETERS AND GUIDELINES

On December 9, 2004, the Commission on State Mandates adopted the attached Amended Parameters and Guidelines.


PAULA HIGASHI, Executive Director

12/10/04
Date

AMENDED PARAMETERS AND GUIDELINES

Statutes 1975, Chapter 486

Statutes 1984, Chapter 1459

Statutes 2004, Chapter 208 (Budget Act of 2004)

Mandate Reimbursement Process

[For fiscal year 2004-2005, these parameters and guidelines are amended, pursuant to the requirements of: provision 8 of Item 0840-001-0001, and provision 1 of Item 8885-001-0001 of the Budget Act of 2004 to include Appendix A.]

Adopted: November 20, 1986

First Amendment Adopted: March 26, 1987

Second Amendment Adopted: October 26, 1995

Third Amendment Adopted: January 30, 1997

Fourth Amendment Adopted: September 25, 1997

Fifth Amendment Adopted: October 29, 1998

Sixth Amendment Adopted: September 30, 1999

Seventh Amendment Adopted: September 28, 2000

Eighth Amendment Adopted: October 25, 2001

Ninth Amendment Adopted: February 27, 2003

Tenth Amendment Adopted: September 25, 2003

Eleventh Amendment Adopted: December 9, 2004

I. SUMMARY OF THE MANDATE

Statutes 1975, chapter 486, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the state. In addition, Statutes 1975, chapter 486 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Statutes 1984, chapter 1459, created the Commission on State Mandates (Commission), which replaced the Board of Control with respect to hearing mandate cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by article XIII B, section 6 of the California Constitution for state mandates under Government Code section 17552.

Together these laws establish the process by which local agencies receive reimbursement for state-mandated programs. As such, they prescribe the procedures that must be followed before mandated costs are recognized. They also dictate reimbursement activities by requiring local agencies and school districts to file claims according to instructions issued by the Controller.

On March 27, 1986, the Commission determined that local agencies and school districts incurred "costs mandated by the state" as a result of Statutes 1975, chapter 486, and Statutes 1984, chapter 1459. Specifically, the Commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program as well as to obtain reimbursement for the costs of mandated programs.

II. ELIGIBLE CLAIMANTS

Any local agency as defined in Government Code section 17518, or school district as defined in Government Code section 17519, which incurs increased costs as a result of this mandate is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

- (a) A local agency or school district may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).
- (b) A local agency or school district may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
- (c) In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between October 15 and January 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Reimbursable actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561 (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct. ", and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

A. Scope of Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur state-mandated costs. The purpose of this test claim is to establish that local governments cannot be made financially whole unless all state mandated costs -- both direct and indirect -- are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of state-imposed mandates, all resulting costs are recoverable.

B. Reimbursable Activities

1. Test Claims

All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including those same costs of an unsuccessful test claim if an adverse Commission ruling is later reversed as a result of a court order. These activities include, but are not limited to, the following: preparing and presenting test claims,

developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions. The costs of all successful test claims are reimbursable.

Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and indirect costs.

2. Reimbursement Claims

All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local agencies and school districts, unless the Legislature has suspended the operation of mandate pursuant to state law. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and indirect costs.

Incorrect Reduction Claims are considered to be an element of the reimbursement process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

3. Training

a. Classes

Include the costs of classes designed to assist the claimant in identifying and correctly preparing state-required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate. (One-time activity per employee.)

b. Commission Workshops

Participation in workshops convened by the Commission is reimbursable. Such costs include, but are not limited to, salaries and benefits, transportation, and per diem. This does not include reimbursement for participation in rulemaking proceedings.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contract Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Reporting

1. Local Agencies

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services

distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the Claimant shall have the choice of one of the following methodologies:

- a. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
- b. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

2. School Districts

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central

governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

3. County Offices of Education

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

4. Community College Districts

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter¹ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimant experiences in the same program as a direct result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, services fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

¹ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

(Continue to Appendix A)

PARAMETERS AND GUIDELINES

Statutes 1975, Chapter 486
Statutes 1984, Chapter 1459

APPENDIX A

Limitation on Reimbursement for Independent Contractor Costs During Fiscal Years 2004-2005²

- A. If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.

The maximum amount of reimbursement provided in subdivision (a) for an independent contractor may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without incurring the additional costs claimed by the local agency or school district.

- B. Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable within the limitations imposed under A. above. Provide copies of the invoices and/or claims that were paid. For the preparation and submission of claims pursuant to Government Code sections 17561 and 17564, submit an estimate of the actual costs that would have been incurred for that purpose if performed by employees of the local agency or school district; this cost estimate is to be certified by the governing body or its designee.

If reimbursement is sought for independent contractor costs that are in excess of [Test (1)] ten percent of the claims prepared and submitted by the independent contractor or [Test (2)] the actual costs that necessarily would have been incurred for that purpose if performed by employees or the local school district, appropriate documentation must be submitted to show that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district. Appropriate documentation includes the record of dates and time spent by staff of the contractor for the preparation and submission of claims on behalf of the local agency or school district, the contractor's billed rates, and explanation on reasons for exceeding Test (1) and/or Test (2). In the absence of appropriate documentation,

² The limitation added by the Budget Act of 2004, Statutes 2004, chapter 208, in Item 0840-001-0001, Provision 8, and in Item 8885-001-0001, Provision 1, is shown as part A. of this Appendix.

reimbursement is limited to the lesser of Test (1) and/or Test (2). No reimbursement shall be permitted for the cost of contracted services without the submission of an estimate of actual costs by the local agency or school district.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

December 10, 2004, I served the:

Amended Parameters and Guidelines

Mandate Reimbursement Process, CSM-4485

Statutes 1975, Chapter 486

Statutes 1984, Chapter 1459

Statutes 2004, Chapter 208

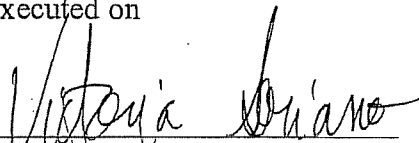
by placing a true copy thereof in an envelope addressed to:

Ms. Ginny Brummels
State Controller's Office
Division of Accounting and Reporting
3301 C Street, Suite 501
Sacramento, CA 95816

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 10, 2004 at Sacramento, California.


VICTORIA SORIANO

Commission on State Mandates

Original List Date: 7/28/2000
Last Updated: 6/23/2004
List Print Date: 12/10/2004
Claim Number: 4485
Issue: Mandate Reimbursement

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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COMMISSION ON STATE MANDATES

NOTICE AND AGENDA¹

State Capitol, Room 126

Sacramento, California

September 27, 2005

9:30 A.M. - CLOSED EXECUTIVE SESSION

10:00 A.M. - PUBLIC MEETING AND HEARING

- I. CALL TO ORDER AND ROLL CALL
- II. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526. (Closed Executive Session will begin at this time and may be reconvened at the end of the public meeting.)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

New Cases

- 1. *Yuba City Unified School District v. State of California, et al.*, Sacramento Superior Court Case No. 05CS01237, CSM Case No. 05-L-01 [*Graduation Requirements IRC*]
- 2. *John Swett Unified School District v. State of California, et al.*, Sacramento Superior Court Case No. 05CS01262, CSM Case No. 05-L-02 [*Graduation Requirements, IRC*]
- 3. *West Contra Costa Unified School District, et al. v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 05CS01253 CSM Case No. 05-L-03 [*Graduation Requirements, IRC*]
[Filed on behalf of 12 school districts: West Contra Costa USD, Anderson Union High School District, Center USD, Lake Tahoe USD, Lincoln USD, Linden USD, Novato USD, Ojai USD, Placer Union High School District, San Juan USD, Stockton USD, Vallejo City USD]

Other Cases

- 4. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01069, CSM Case No. 03-L-01, consolidated with *County of Los Angeles v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS087959, transferred to Sacramento Superior Court, Case No. 05CS00865, CSM Case No. 03-L-11 [*Animal Adoption*]

¹ This public meeting notice is available on the Internet at <http://www.csm.ca.gov>.

5. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
6. *San Diego Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01401, CSM Case No. 03-L-03 [*Graduation Requirements IRC*]
7. *Castro Valley Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01568, CSM Case No. 03-L-04 [*Graduation Requirements IRC*]
8. *San Jose Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01569, CSM Case No. 03-L-05 [*Graduation Requirements IRC*]
9. *Sweetwater Union High School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01570, CSM Case No. 03-L-06 [*Graduation Requirements IRC*]
10. *Clovis Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01702, CSM Case No. 03-L-09 [*Graduation Requirements IRC*]
11. *Grossmont Union High School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 04CS00028, CSM Case No. 03-L-10 [*Graduation Requirements IRC*]
12. *CSAC Excess Insurance Authority v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS092146, CSM Case No. 04-L-01 [*Cancer Presumption for Law Enforcement and Firefighters and Lower Back Injury Presumption for Law Enforcement*], consolidated with *City of Newport Beach v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS095456, CSM Case No. 04-L-02 [*Skin Cancer Presumption for Lifeguards*]
13. *County of Los Angeles, et al. v. Commission on State Mandates, et al.*, Second District Court of Appeal [Los Angeles] Case Number B183981, CSM Case No. 04-L-03, (Los Angeles Superior Court Nos. BS089769, BS089785) [*Transit Trash Receptacles, et al./Waste Discharge Requirements*]
14. *Southern California Association of Governments, et al. v. Commission on State Mandates*, Sacramento Superior Court Case No. 05CS00956, CSM Case No. 04-L-04 [*Regional Housing Needs Determination-Councils of Government*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526. Discussion and action, if appropriate, on recommendation of Personnel Sub-Committee on:

- Appointment of Interim Chief Legal Counsel
- Testing, Selection and Appointment of Chief Legal Counsel (CEA IV)

III. REPORT FROM CLOSED EXECUTIVE SESSION, RECONVENE IN PUBLIC SESSION

IV. APPROVAL OF MINUTES (action)

- Item 1 July 28, 2005
 August 23, 2005

V. PROPOSED CONSENT CALENDAR (action)

- Item 2 If there are no objections to any of the following action items designated by an asterisk (*), the Executive Director will include it on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.

VI. APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181, SUBDIVISION (c). (action)

(Note: This item is limited to appeals regarding this month's agenda items.)

- Item 3 Staff Report (if necessary)

VII. RECONSIDERATION OF PRIOR STATEMENTS OF DECISION AS DIRECTED BY THE LEGISLATURE IN STATUTES 2004, CHAPTER 316 (AB 2851) AND CHAPTER 895 (AB 2855) (action)

(Note: Item 5 will not be voted on unless the staff recommendation for Item 4 is adopted.)

- Item 4 *Sex Offenders: Disclosure by Law Enforcement Officers*, 04-RL-9715-06
Penal Code Sections 290 and 290.4, as amended by Statutes 1996, Chapters 908 (AB 1562) and 909 (SB 1378); Statutes 1997, Chapters 17 (SB 947), 80 (AB 213), 817 (AB 59), 818 (AB 1303), 819 (SB 314), 820 (SB 882), 821 (AB 290) and 822 (SB 1078); and, Statutes 1998, Chapters 485 (AB 2803), 550 (AB 2799), 927 (AB 796), 928 (AB 1927), 929 (AB 1745) and 930 (AB 1078)

- Item 5 Proposed Statement of Decision
Sex Offenders: Disclosure by Law Enforcement Officers, 04-RL-9715-06
See Above

VIII. SET ASIDE OF PRIOR STATEMENTS OF DECISION, AND DISMISSAL OF RECONSIDERATION AS DIRECTED BY THE LEGISLATURE IN STATUTES 2005, CHAPTER 72 (AB 138) (action)

- Item 6 *Brown Act Reform*, 04-RL-4469-08, CSM-4469 and *Open Meetings Act*, CSM 4257
Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7
Statutes 1993, Chapters 1136 (AB 1426), 1137 (SB 36), and 1138 (SB 1140);
Statutes 1994, Chapter 32 (SB 752); and Statutes 1986, Chapter 1994 (AB 2674)

IX. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

A. ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES AND AMENDMENTS TO PARAMETERS AND GUIDELINES

- Item 7* *The Stull Act*, 98-TC-25
Denair Unified School District and Grant Joint Union High School District, Claimants
Education Code Sections 44660 – 44665 (formerly Ed. Code §§ 13485-13490)
Statutes 1975, Chapter 1216 (SB 777); Statutes 1983, Chapter 498 (SB 813);
Statutes 1986, Chapter 393 (AB 3878); Statutes 1995, Chapter 392 (AB 729);
Statutes 1999, Chapter 4 (SB 412)
- Item 8* *Mandate Reimbursement Process*, CSM-4485
Statutes 1975, Chapter 486 (AB 1375), Statutes 1984, Chapter 1459 (SB 2337);
Statutes 1995, Chapter 303 (AB 903 - Budget Act of 1995); Statutes 1996,
Chapter 162 (SB 1393 - Budget Act of 1996); Statutes 1997, Chapter 282 (AB 107 - Budget Act of 1997); Statutes 1998, Chapter 324 (AB 1656 - Budget Act of 1998); Statutes 1999, Chapter 50 (SB 160 - Budget Act of 1999); Statutes 2000, Chapter 52 (AB 1740 - Budget Act of 2000); Statutes 2001, Chapter 106 (SB 739 - Budget Act of 2001); Statutes 2002, Chapter 379 (AB 425 - Budget Act of 2002); Statutes 2003, Chapter 157 (AB 1765 - Budget Act of 2003); Statutes 2004, Chapter 208 (SB 1113 - Budget Act of 2004); Statutes 2005, Chapter 38 (SB 77 - Budget Act of 2005)

B. SET ASIDE PARAMETERS AND GUIDELINES, AS DIRECTED BY THE
LEGISLATURE, STATUTES 2004, CHAPTER 72, (AB 138)

- Item 9* *Brown Act Reform*, 04-PGA-08 (CSM-4469) and
Open Meetings Act (CSM-4257)
Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7
Statutes 1993, Chapters 1136 (AB 1426), 1137 (SB 36), and 1138 (SB 1140);
Statutes 1994, Chapter 32 (SB 752); and
Statutes 1986, Chapter 641 (AB 2674)
- Item 10* *Redevelopment Agencies – Tax Disbursement Reporting*, 99-TC-06
Health and Safety Code Section 33672.7
Statutes 1998, Chapter 39 (SB 258)

C. SET ASIDE PARAMETERS AND GUIDELINES BASED ON STATUTES
2004, CHAPTER 316 (AB 2851)

- Item 11* *Residential Care Services*, 04-PGA-12 (CSM-4292) (Tentative)
Welfare and Institutions Code Sections 4075, 4076, and 5705.6
Statutes 1985, Chapter 1352 (SB 155); Title 9, California Code of Regulations,
Section 549, DMH Letters No. 85-40, 86-14, 86-26, 86-30, 87

D. SET ASIDE OR AMEND PARAMETERS AND GUIDELINES BASED ON
STATUTES 2004, CHAPTER 889, (AB 2853) AND REQUEST OF THE
STATE CONTROLLER'S OFFICE

- Item 12* *Involuntary Lien Notices*, 04-PGA-15 (SB 90-3891)
Statutes 1980, Chapter 1281 (AB 481)
- Item 13* *Property Tax: Family Transfers*, 04-PGA-16 (CSM-4320)
Statutes 1987, Chapter 48 (AB 47)
- Item 14* *County Treasury Oversight Committees*, 04-PGA-17 (CSM 96-365-03)
Government Code Sections 27130, 27131, 27132, 27132.1, 27132.2, 27132.3,
27132.4, 27133, 27134, 27135, 27136, 27137
Statutes of 1995, Chapter 784 (SB 866); Statutes of 1996, Chapter 156 (SB 864)
- Item 15* *Investment Reports*, 04-PGA-18 (CSM 96-358-02)
Government Code Section 53646, Subdivisions (a), (b), and (e)
Statutes 1995, Chapter 783 (SB 564) Statutes 1996, Chapter 156 (SB 864)
Statutes 1996, Chapter 749 (SB 109)
- Item 16* *Two-Way Traffic Signal Communications*, 04-PGA-19 (CSM-4504)
Vehicle Code Section 2140
Statutes 1994, Chapter 1297 (AB 3418), Statutes 2004, Chapter 889 (AB 2853)
- Item 17* *Misdemeanors: Booking and Fingerprinting*, 04-PGA-20 (CSM-4436)
Penal Code Section 853.6
Statutes 1992, Chapter 1105 (AB 3156)

E. SET ASIDE OR AMEND PARAMETERS AND GUIDELINES BASED ON BY
STATUTES 2004, CHAPTER 895 (AB 2855)

Item 18* *Pupil Exclusions*, 04-PGA-28 (CSM-4457 & 4477) (Tentative)
Statutes 1978, Chapter 668 (AB 2191)

F. SET ASIDE OR AMEND PARAMETERS AND GUIDELINES BASED ON
AMENDMENTS BY STATUTES 2004, CHAPTER 227 (SB 1102)

Item 19* *Senior Citizens' Mobilehome Property Tax Deferral Program*, 04-PGA-31
(SB 90-1623)
Statutes 1983, Chapter 1051 (AB 800)

G. PROPOSED AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS,
TITLE 2, DIVISION 2, CHAPTER 2.5 (action)

Item 20 Adoption of Proposed Regulatory Action: Appeal of Executive Director
Decisions; Amendments to California Code of Regulations, Title 2, Chapter
2.5, Article 1. General, Section 1181

H. MEETING AND HEARING CALENDAR

Item 21 Adoption of 2006 Meeting and Hearing Calendar

XI. STAFF REPORTS

Item 22 Chief Legal Counsel's Report (info).
Recent Decisions, Litigation Calendar

Item 23 Executive Director's Report (info/action)
Workload, Legislation, and Mandate Reform

XII. PUBLIC COMMENT

XIII. ADJOURNMENT

For information, contact:

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ITEM 8

FINAL STAFF ANALYSIS PROPOSED PARAMETERS AND GUIDELINES AMENDMENT

Statutes 1975, Chapter 486
Statutes 1984, Chapter 1459
Statutes 1995, Chapter 303 (Budget Act of 1995)
Statutes 1996, Chapter 162 (Budget Act of 1996)
Statutes 1997, Chapter 282 (Budget Act of 1997)
Statutes 1998, Chapter 324 (Budget Act of 1998)
Statutes 1999, Chapter 50 (Budget Act of 1999)
Statutes 2000, Chapter 52 (Budget Act of 2000)
Statutes 2001, Chapter 106 (Budget Act of 2001)
Statutes 2002, Chapter 379 (Budget Act of 2002)
Statutes 2003, Chapter 157 (Budget Act of 2003)
Statutes 2004, Chapter 208 (Budget Act of 2004)
Statutes 2005, Chapter 38 (Budget Act of 2005)

Mandate Reimbursement Process

EXECUTIVE SUMMARY

Summary of the Mandate

On March 27, 1986, the Commission on State Mandates (Commission) determined that Statutes 1975, chapter 486, and Statutes 1984, chapter 1459 imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program, as well as to obtain reimbursement for the costs of mandated programs. The original parameters and guidelines for this program were adopted on November 20, 1986.

The *Mandate Reimbursement Process* program allows local agencies and school districts to be reimbursed for costs incurred in preparing and presenting successful test claims to the Commission and submitting reimbursement claims to the State Controller's Office (SCO). Incorrect reduction claims are considered an element of reimbursement claims.

Beginning in 1995, the state budget act has included supplemental language in the support appropriations for the SCO and the Commission. In the 2005-2006 state budget act this supplemental language is contained in the support appropriation for the SCO. This language addresses local reimbursement for the costs of contracting with an independent contractor. The Commission adopted Appendix A to comply with the supplemental language.

Each year, the Commission amends these parameters and guidelines and Appendix A to incorporate the most recently enacted state budget act. However, the amendment does not include any other revisions enacted by subsequent legislation. Subsequent statutory revisions

must be submitted as new test claims, and approved by the Commission before being included in parameters and guidelines.¹

On July 11, 2005, the 2005-2006 state budget act² was enacted. Commission staff prepared the proposed annual amendment of the *Mandate Reimbursement Process* parameters and guidelines to incorporate the Budget Act of 2005.

Staff Recommendation

Staff recommends that the Commission adopt the proposed amended parameters and guidelines, beginning on page 3.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

¹ For example, Statutes 1999, chapter 643 (AB 1679) added new provisions to allow the Commission to accept more than one test claim on the same statute or executive order. These new provisions are not reimbursable under the *Mandates Reimbursement Process* parameters and guidelines.

² Statutes 2005, chapter 38 (Budget Act of 2005)

AMENDED PARAMETERS AND GUIDELINES

Statutes 1975, Chapter 486

Statutes 1984, Chapter 1459

Statutes ~~2004~~2005, Chapter ~~20838~~ (Budget Act of ~~2004~~2005)

Mandate Reimbursement Process

[For fiscal year ~~2004~~2005-~~2005~~2006, these parameters and guidelines are amended, pursuant to the requirements of: provision ~~8-7~~ of Item 0840-001-0001, and provision ~~1~~ of Item ~~8885-001-0001~~ of the Budget Act of ~~2004~~2005 to include Appendix A.]

Adopted: November 20, 1986
First Amendment Adopted: March 26, 1987
Second Amendment Adopted: October 26, 1995
Third Amendment Adopted: January 30, 1997
Fourth Amendment Adopted: September 25, 1997
Fifth Amendment Adopted: October 29, 1998
Sixth Amendment Adopted: September 30, 1999
Seventh Amendment Adopted: September 28, 2000
Eighth Amendment Adopted: October 25, 2001
Ninth Amendment Adopted: February 27, 2003
Tenth Amendment Adopted: September 25, 2003
Eleventh Amendment Adopted: December 9, 2004
Twelfth Amendment Adopted: September 27, 2005

I. SUMMARY OF THE MANDATE

Statutes 1975, chapter 486, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the state. In addition, Statutes 1975, chapter 486 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Statutes 1984, chapter 1459, created the Commission on State Mandates (Commission), which replaced the Board of Control with respect to hearing mandated cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by article XIII B, section 6 of the California Constitution for state mandates under Government Code section 17552.

Together these laws establish the process by which local agencies receive reimbursement for state-mandated programs. As such, they prescribe the procedures that must be followed before mandated costs are recognized. They also dictate reimbursement activities by requiring local agencies and school districts to file claims according to instructions issued by the Controller.

On March 27, 1986, the Commission determined that local agencies and school districts incurred "costs mandated by the state" as a result of Statutes 1975, chapter 486, and Statutes 1984, chapter 1459. Specifically, the Commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program, as well as to obtain reimbursement for the costs of mandated programs.

II. ELIGIBLE CLAIMANTS

Any local agency as defined in Government Code section 17518, or school district as defined in Government Code section 17519, which incurs increased costs as a result of this mandate is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

- (a) A local agency or school district may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).
- (b) A local agency or school district may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
- (c) In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between October 15 and January 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Reimbursable actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561 (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.¹

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct,"; and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

A. Scope of Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur state-mandated costs. The purpose of this test claim is to establish that local governments cannot be made financially whole unless all state-mandated costs -- both direct and indirect -- are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of state-imposed mandates, all resulting costs are recoverable.

B. Reimbursable Activities

1. Test Claims

All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including those same costs of an unsuccessful test

¹ Statutes 2005, chapter 38 (SB 77), Item 8885-295-0001, Schedule 3 (ff).

claim if an adverse Commission ruling is later reversed as a result of a court order. These activities include, but are not limited to, the following: preparing and presenting test claims, developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions. The costs of all successful test claims are reimbursable.

Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and indirect costs.

2. Reimbursement Claims

All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local agencies and school districts, unless the Legislature has suspended the operation of mandate pursuant to state law. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and indirect costs.

Incorrect Reduction Claims are considered to be an element of the reimbursement process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

3. Training

a. Classes

Include the costs of classes designed to assist the claimant in identifying and correctly preparing state-required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate. (One-time activity per employee.)

b. Commission Workshops

Participation in workshops convened by the Commission is reimbursable. Such costs include, but are not limited to, salaries and benefits, transportation, and per diem. This does not include reimbursement for participation in rulemaking proceedings.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours).

Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Reporting

1. Local Agencies

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without

efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

- a. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
- b. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

2. School Districts

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

3. County Offices of Education

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

4. Community College Districts

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter² is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a direct result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, services fees collected, -federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be

² This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

derived from the statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

(Continue to Appendix A)

PARAMETERS AND GUIDELINES

Statutes 1975, Chapter 486
Statutes 1984, Chapter 1459

APPENDIX A

Limitation on Reimbursement for Independent Contractor Costs During Fiscal Years 20042005-20052006³

- A. If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.

The maximum amount of reimbursement provided in subdivision (a) for an independent contractor may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without incurring the additional costs claimed by the local agency or school district.

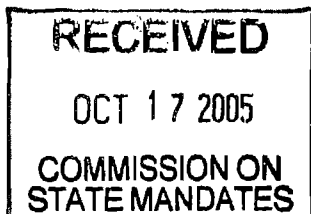
- B. Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable within the limitations imposed under A. above. Provide copies of the invoices and/or claims that were paid. For the preparation and submission of claims pursuant to Government Code sections 17561 and 17564, submit an estimate of the actual costs that would have been incurred for that purpose if performed by employees of the local agency or school district; this cost estimate is to be certified by the governing body or its designee.

If reimbursement is sought for independent contractor costs that are in excess of [Test (1)] ten percent of the claims prepared and submitted by the independent contractor or [Test (2)] the actual costs that necessarily would have been incurred for that purpose if performed by employees or the local school district, appropriate documentation must be submitted to show that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district. Appropriate documentation includes the record of dates and time spent by staff of the contractor for the preparation and submission of claims on behalf of the local agency or school district, the contractor's billed rates, and explanation on reasons for exceeding Test (1) and/or Test (2). In the absence of appropriate documentation,

³ The limitation added by the Budget Act of 20042005, Statutes 20042005, chapter 20838, in Item 0840-001-0001, Provision 87, and in Item 8885-001-0001, Provision 1, is shown as part A. of this Appendix.

reimbursement is limited to the lesser of Test (1) and/or Test (2). No reimbursement shall be permitted for the cost of contracted services without the submission of an estimate of actual costs by the local agency or school district.

PUBLIC HEARING
COMMISSION ON STATE MANDATES



--o0o--

ORIGINAL

TIME: 9:34 a.m.
DATE: September 27, 2005
PLACE: State Capitol, Room 126
Sacramento, California

--o0o--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--o0o--

Reported By: YVONNE K. FENNER, CSR License #10909, RPR

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Representative of Tom Campbell, Director
State Department of Finance

NICHOLAS SMITH

Representative of Steve Westly
State Controller

JAN BOEL

Deputy Director, Office of Planning and Research

PAUL GLAAB

City Council Member
Laguna Niguel City Council

FRANCISCO LUJANO

Representative of Philip Angelides
State Treasurer

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PAULA HIGASHI, Executive Director

CATHERINE M. CRUZ, Program Analyst

ERIC FELLER, Commission Counsel

NANCY PATTON, Assistant Executive Director

CAMILLE SHELTON, Senior Commission Counsel

KATHERINE TOKARSKI, Commission Counsel

--o0o--

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1 August minutes. All those in favor say "aye."
2 MULTIPLE SPEAKERS: Aye.
3 CHAIRPERSON SHEEHAN: Any opposed?
4 (No audible response.)
5 CHAIRPERSON SHEEHAN: Those are adopted
6 unanimously.
7 MS. HIGASHI: And Ms. Boel I'll list as
8 abstention.
9 MS. BOEL: Yes, I abstain.
10 CHAIRPERSON SHEEHAN: Okay. Next item, the
11 consent calendar. Any changes to the calendar?
12 MS. HIGASHI: We have no changes to the proposed
13 consent calendar. You should have it before you. It is
14 the blue sheet.
15 CHAIRPERSON SHEEHAN: It is changed, though, from
16 what had gone out earlier.
17 MS. HIGASHI: It's changed from the original
18 agenda. Let me read the items just so it's clear.
19 Item 7, item 8, item 9, item 10, item 12, 13, 14, 15, 16,
20 and 19.
21 CHAIRPERSON SHEEHAN: Yeah. And items 11 and 18
22 are continued to our next meeting.
23 MS. HIGASHI: Yes.
24 CHAIRPERSON SHEEHAN: Is that correct?
25 MS. HIGASHI: Those are not in your binders.

1 CHAIRPERSON SHEEHAN: Okay. All right. Are
2 there any objections to the proposed consent calendar?
3 (No audible response.)
4 CHAIRPERSON SHEEHAN: No? If not, we'll
5 entertain a motion.
6 MR. GLAAB: So moved.
7 CHAIRPERSON SHEEHAN: Mr. Glaab moves the consent
8 calendar.
9 MS. BOEL: I second.
10 CHAIRPERSON SHEEHAN: Ms. Boel seconds. All
11 those in favor say "aye."
12 MULTIPLE SPEAKERS: Aye.
13 CHAIRPERSON SHEEHAN: Any opposed?
14 (No audible response.)
15 CHAIRPERSON SHEEHAN: That is adopted
16 unanimously.
17 MS. HIGASHI: Thank you.
18 CHAIRPERSON SHEEHAN: Item No. 3, Paula.
19 MS. HIGASHI: There are no appeals under item
20 No. 3.
21 CHAIRPERSON SHEEHAN: Okay.
22 MS. HIGASHI: This brings us to item No. 4, which
23 is our reconsideration, Sex Offenders: Disclosure by Law
24 Enforcement Officers. This item will be presented by
25 Commission Counsel Eric Feller.

1 REPORTER'S CERTIFICATE

2

3 I hereby certify the foregoing hearing was held

4 at the time and place therein named; that the proceedings

5 were reported by me, a duly certified shorthand reporter

6 and a disinterested person, and was thereafter

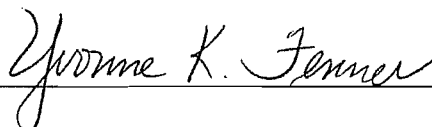
7 transcribed into typewriting.

8 In witness whereof, I have hereunto set my hand

9 this 17th day of October, 2005.

10

11

12 

13 Yvonne K. Fenner

14 Certified Shorthand Reporter

15 License No. 10909

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E-mail: csminfo@csm.ca.gov



October 4, 2005

Ms. Ginny Brummels
State Controller's Office
Division of Accounting and Reporting
3301 C Street, Suite 501
Sacramento, CA 95816

And Affected State Agencies and Interested Parties (See Enclosed Mailing List)

Re: Amended Parameters and Guidelines*Mandate Reimbursement Process, CSM-4485*

Statutes 1975, Chapter 486

Statutes 1984, Chapter 1459

Statutes 1995, Chapter 303 (Budget Act of 1995)

Statutes 1996, Chapter 162 (Budget Act of 1996)

Statutes 1997, Chapter 282 (Budget Act of 1997)

Statutes 1998, Chapter 324 (Budget Act of 1998)

Statutes 1999, Chapter 50 (Budget Act of 1999)

Statutes 2000, Chapter 52 (Budget Act of 2000)

Statutes 2001, Chapter 106 (Budget Act of 2001)

Statutes 2002, Chapter 379 (Budget Act of 2002)

Statutes 2003, Chapter 157 (Budget Act of 2003)

Statutes 2004, Chapter 208 (Budget Act of 2004)

Statutes 2005, Chapter 38 (Budget Act of 2005)

Dear Ms. Brummels:

On September 27, 2005, the Commission on State Mandates adopted the enclosed amended parameters and guidelines.

If you have any questions, please contact Tina Poole at (916) 323-8220.

Sincerely,

A handwritten signature in cursive script that reads 'Paula Higashi'.

PAULA HIGASHI
Executive Director

Enclosure

J:\mandates\4000\4485\2005\pgaadopttrans

MAILED: Mail List FAXED: _____
DATE: 10/4 INITIAL: LJ
CHRON: X FILE: _____
WORKING BINDER: _____

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE AMENDMENT TO PARAMETERS
AND GUIDELINES ON:

Statutes 1975, Chapter 486; Statutes 1984,
Chapter 1459; Statutes 1995, Chapter 303
(Budget Act of 1995); Statutes 1996, Chapter
162 (Budget Act of 1996); Statutes 1997,
Chapter 282 (Budget Act of 1997); Statutes
1998, Chapter 324 (Budget Act of 1998);
Statutes 1999, Chapter 50 (Budget Act of
1999); Statutes 2000, Chapter 52 (Budget Act
of 2000); Statutes 2001, Chapter 106 (Budget
Act of 2001); Statutes 2002, Chapter 379
(Budget Act of 2002); Statutes 2003, Chapter
1577 (Budget Act of 2003); Statutes 2004,
Chapter 208 (Budget Act of 2004); Statutes
2005, Chapter 38 (Budget Act of 2005)

No. CSM-4485

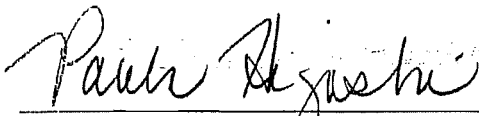
Mandate Reimbursement Process

ADOPTION OF AMENDMENT TO
PARAMETERS AND GUIDELINES
PURSUANT TO GOVERNMENT CODE
SECTION 17557 AND TITLE 2,
CALIFORNIA CODE OF REGULATIONS,
SECTIONS 1183.2 AND 1185.3.

(Adopted on September 27, 2005)

AMENDED PARAMETERS AND GUIDELINES

On September 27, 2005, the Commission on State Mandates adopted the attached Amended Parameters and Guidelines.


PAULA HIGASHI, Executive Director

Oct. 4, 2005
Date

AMENDED PARAMETERS AND GUIDELINES

Statutes 1975, Chapter 486

Statutes 1984, Chapter 1459

Statutes 2005, Chapter 38 (Budget Act of 2005)

Mandate Reimbursement Process

[For fiscal year 2005-2006, these parameters and guidelines are amended, pursuant to the requirements of: provision 7 of Item 0840-001-0001 of the Budget Act of 2005 to include Appendix A.]

Adopted: November 20, 1986

First Amendment Adopted: March 26, 1987

Second Amendment Adopted: October 26, 1995

Third Amendment Adopted: January 30, 1997

Fourth Amendment Adopted: September 25, 1997

Fifth Amendment Adopted: October 29, 1998

Sixth Amendment Adopted: September 30, 1999

Seventh Amendment Adopted: September 28, 2000

Eighth Amendment Adopted: October 25, 2001

Ninth Amendment Adopted: February 27, 2003

Tenth Amendment Adopted: September 25, 2003

Eleventh Amendment Adopted: December 9, 2004

Twelfth Amendment Adopted: September 27, 2005

I. SUMMARY OF THE MANDATE

Statutes 1975, chapter 486, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the state. In addition, Statutes 1975, chapter 486 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Statutes 1984, chapter 1459, created the Commission on State Mandates (Commission), which replaced the Board of Control with respect to hearing mandated cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by article XIII B, section 6 of the California Constitution for state mandates under Government Code section 17552.

Together these laws establish the process by which local agencies receive reimbursement for state-mandated programs. As such, they prescribe the procedures that must be followed before mandated costs are recognized. They also dictate reimbursement activities by requiring local agencies and school districts to file claims according to instructions issued by the Controller.

On March 27, 1986, the Commission determined that local agencies and school districts incurred "costs mandated by the state" as a result of Statutes 1975, chapter 486, and Statutes 1984, chapter 1459. Specifically, the Commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program, as well as to obtain reimbursement for the costs of mandated programs.

II. ELIGIBLE CLAIMANTS

Any local agency as defined in Government Code section 17518, or school district as defined in Government Code section 17519, which incurs increased costs as a result of this mandate is eligible to claim reimbursement of those costs.

III. PERIOD OF REIMBURSEMENT

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

- (a) A local agency or school district may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).
- (b) A local agency or school district may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
- (c) In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between October 15 and January 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Reimbursable actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561 (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.¹

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

A. Scope of Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur state-mandated costs. The purpose of this test claim is to establish that local governments cannot be made financially whole unless all state-mandated costs -- both direct and indirect -- are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of state-imposed mandates, all resulting costs are recoverable.

B. Reimbursable Activities

1. Test Claims

All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including those same costs of an unsuccessful test

¹ Statutes 2005, chapter 38 (SB 77), Item 8885-295-0001, Schedule 3 (ff).

claim if an adverse Commission ruling is later reversed as a result of a court order. These activities include, but are not limited to, the following: preparing and presenting test claims, developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions. The costs of all successful test claims are reimbursable.

Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and indirect costs.

2. Reimbursement Claims

All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local agencies and school districts, unless the Legislature has suspended the operation of mandate pursuant to state law. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and indirect costs.

Incorrect Reduction Claims are considered to be an element of the reimbursement process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

3. Training

a. Classes

Include the costs of classes designed to assist the claimant in identifying and correctly preparing state-required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate. (One-time activity per employee.)

b. Commission Workshops

Participation in workshops convened by the Commission is reimbursable. Such costs include, but are not limited to, salaries and benefits, transportation, and per diem. This does not include reimbursement for participation in rulemaking proceedings.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours).

Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Reporting

1. Local Agencies

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without

efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

- a. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
- b. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

2. School Districts

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

3. County Offices of Education

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

4. Community College Districts

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter² is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a direct result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, services fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be

² This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

derived from the statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

(Continue to Appendix A)

PARAMETERS AND GUIDELINES

Statutes 1975, Chapter 486
Statutes 1984, Chapter 1459

APPENDIX A

Limitation on Reimbursement for Independent Contractor Costs During Fiscal Years 2005-2006³

- A. If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.

The maximum amount of reimbursement provided in subdivision (a) for an independent contractor may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without incurring the additional costs claimed by the local agency or school district.

- B. Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable within the limitations imposed under A. above. Provide copies of the invoices and/or claims that were paid. For the preparation and submission of claims pursuant to Government Code sections 17561 and 17564, submit an estimate of the actual costs that would have been incurred for that purpose if performed by employees of the local agency or school district; this cost estimate is to be certified by the governing body or its designee.

If reimbursement is sought for independent contractor costs that are in excess of [Test (1)] ten percent of the claims prepared and submitted by the independent contractor or [Test (2)] the actual costs that necessarily would have been incurred for that purpose if performed by employees or the local school district, appropriate documentation must be submitted to show that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district. Appropriate documentation includes the record of dates and time spent by staff of the contractor for the preparation and submission of claims on behalf of the local agency or school district, the contractor's billed rates, and explanation on reasons for exceeding Test (1) and/or Test (2). In the absence of appropriate documentation,

³ The limitation added by the Budget Act of 2005, Statutes 2005, chapter 38, in Item 0840-001-0001, Provision 7, is shown as part A. of this Appendix.

reimbursement is limited to the lesser of Test (1) and/or Test (2). No reimbursement shall be permitted for the cost of contracted services without the submission of an estimate of actual costs by the local agency or school district.

Commission on State Mandates

Original List Date: 7/28/2000
Last Updated: 6/8/2005
List Print Date: 10/04/2005
Claim Number: 4485
Issue: Mandate Reimbursement

Mailing Information: Other

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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Ms. Alexandra Condon California Teachers Association 6 Red River Ct Sacramento, CA 95831-3036	Tel: (707) 468-7877 Fax:
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Mr. Arthur Palkowitz San Diego Unified School District 4100 Normal Street, Room 3159 San Diego, CA 92103-8363	Tel: (619) 725-7565 Fax: (619) 725-7569
Mr. Gerald Shelton California Department of Education (E-08) Fiscal and Administrative Services Division	Tel: (916) 445-0541 Fax: (916) 327-8306

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COMMISSION ON STATE MANDATES

1025 P STREET, ROOM 177
SACRAMENTO, CA 95814
(916) 323-3562

**FILE COPY**

January 8, 1986

Paul Robinson
County of Fresno
P.O. Box 1247
Fresno, CA 93715-1247

Re: CSM-4204
County of Fresno
(Chapter 486, Statutes of 1975 and Chapter 1459, Statutes of 1984)
Mandate Reimbursement Process

Dear Mr. Robinson:

I am writing in response to our earlier telephone conversation, concerning the hearing on the above entitled claim. As you already know, the Department of Finance and the State Controller's Office have stated that they will not be able to respond to your test claim in time for the commission's February hearing. Because it was unlikely that the commission would hear the claim with no departmental recommendations, the claim will be heard on March 27, 1986. This hearing will take place at 10:00 a.m. in Room 2040, State Capitol, Sacramento, California.

As a result of rescheduling the hearing date, state agency recommendations are now due on January 30, 1986 and rebuttals from the claimant are due on February 20, 1986. Claimants and state agencies should note that they are required to submit all information including arguments, declarations, laws, and evidence being relied upon, to support their position by the due dates shown. If substantial new evidence or argument either oral or written, is presented at the hearing a probable consequence will be the continuation of the claim to a subsequent hearing. The continuation will be required in order to allow the opposing party and commission staff the opportunity to review the new information.

If you have any further questions, or concerns, please do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Stephen R. Lehman".

STEPHEN R. LEHMAN
Program Analyst

SRL:cc:0810A

cc: Jim Apps, Department of Finance--Recommendation due: 1/30/86
Glen Beatie, State Controller's Office--Recommendation due: 1/30/86
Lyle Defenbaugh, Legislative Analyst's Office
Carol Hunter, Attorney General's Office



Gary W. Peterson
Auditor-Controller/Treasurer

February 14, 1986



Mr. Stephen R. Lehman
Program Analyst
Commission on State Mandates
1025 "P" Street, Room 177
Sacramento, California 95814

Dear Mr. Lehman:

As requested, attached is Fresno County's response to the comments by the State Controller and the Department of Finance to CSM-4204, our test claim dealing with the Mandate Reimbursement Process. Their analyses have not altered our position that the costs associated with this process should be reimbursed.

If you have any further questions or comments in this regard, please contact Paul Robinson in our Costs/Grants Division at (209) 488-3496.

Sincerely,

Gary W. Peterson
Auditor-Controller/Treasurer

GWP:PR:kmg

Attachments:

- A - Response to the State Controller and Department of Finance Analyses of Claim No. CSM-4204
- B - Chapter 1406, Statutes of 1972
- C - Opinion of Peter A. Baldrige
- D - Attorney General's Opinion No. 85-502
- E - Legislative Analyst's Analysis of Proposition 4

cc: Vincent McGraw, County Counsel
Thomas Gardner, County Administrative Office

RESPONSE TO THE STATE CONTROLLER AND DEPARTMENT OF
FINANCE ANALYSES OF CLAIM NO. CSM-4204

In response to the December 5, 1985, letter from the Commission on State Mandates, representatives of the Department of Finance and the State Controller have recommended that Claim No. CSM-4204 from Fresno County regarding the Mandate Reimbursement Process (Chapter 486/75 and 1459/84) be denied. The justification for this negative reaction appears to be based primarily on two theories: (1) that the reimbursement process was established prior to January 2, 1973, and (2) that the statutory process is permissive, not mandatory.

The purpose of this response is to rebut these allegations and to reiterate Fresno County's contention that reimbursement of claiming costs is both legally and morally required.

The Pre-1973 Process

1. One of the contentions is that the basic claiming process was actually established by Chapter 1406, Statutes of 1972; and since this law was not "mandated by legislative action after January 1, 1973," any new claiming costs mandated by the State need not be reimbursed. First, we do not agree that Chapter 1405 is relevant in this regard. (This point is discussed in more detail below.) However, even if it were, the language of the applicable sections indicate that claiming cost should have been paid even under that law; and failure to do so resulted not from a strict interpretation of the code but from discriminatory policies that remain inconsistent with related administrative procedures.

Chapter 1406, the "Property Relief Act of 1972" featured many legal revisions. One was the addition of Chapter 1.5 to Part 4 of Division 1 of the Revenue and Taxation Code. Included within that addition was section 2164.3, which alone discussed state-mandated programs. This section stated, in relevant part, that the "state shall pay ... for the full costs" (underlining added) of mandated programs. It is our contention that "full costs" means exactly what it says -- all costs (direct, indirect, proximate) resulting from mandates; and claiming costs are a direct result of this process. I.e., but for each mandate, no claiming costs would arise.

Support for this contention is even found in state reimbursement policies for similar programs. For example, claiming costs are paid by the Controller for cases under Penal Code Section 4700, although the language of that section is arguably more restrictive than Section 2164.3. In a memo dated January 7, 1986, Peter A. Baldridge declared that claiming cost should be treated as "direct costs." Not only does that mean that the claim preparation costs incurred by the County employees must be paid by the state, but "reimbursement for the costs incurred by the county for claim preparation by private consultants appears to be legally authorized."1/

We contend that the opinion of Mr. Baldridge is correct, that claiming costs are indeed direct costs, and that direct costs must be reimbursed -- even under the language of Chapter 1406.

2. Even though Chapter 1406/72 supports Fresno County's request for reimbursement, it is the events since 1973 that have primarily affected local agencies. First, Chapter 1406's mandate language was limited in nature and intended to compensate local agencies for revenue losses resulting from other changes contained in that legislation. Subsequent laws revised the scope and complexity of the claiming process by imposing new costs and duties upon local agencies. For example, the current claiming instruction for Underground Storage Tanks (No. 86-1) is 31 pages in length and may require the use of a professional consultant if all its technicalities are to be correctly addressed. Both these procedures and the resulting cost impact were created after 1973. In fact, there are cases where local agencies have not submitted claims because the filing costs are prohibitive. In short, without reimbursement of these direct costs which will be incurred only because of the mandated program, some agencies will not be able to obtain the reimbursement they are constitutionally entitled to receive.

Second, whatever claiming procedures may have been enacted prior to 1973, they cannot be used to disclaim new costs resulting from subsequent state activity. The claiming process becomes a part of each new act. Each new program is a new mandate. The claim costs and procedures are likewise new and unique. Indeed, new parameters and guidelines, new claiming instructions, and new county activities are incurred with each new program or higher level of service; and as such, they require a higher level of county activity and increased costs in and of themselves.

Third, even if one were to (incorrectly) contend that Chapter 1406 is relevant, it applied only to specific situations. According to the Department of Finance's own analysis, the law had nothing to do with unfunded mandates and, as such, all costs related to those programs are caused by subsequent laws. The concept of funded and unfunded mandates should not be treated as inseparable Siamese twins just because both programs eventually require claims to be filed with the Controller. At a minimum, Finance's assertions confirm that test claim cost resulted from post-1973 legislation.

Fourth, whatever procedures may have existed before were revoked by Proposition 4. With the enactment of Article XIII B, the constitution, not the legislature, defined mandate obligations.^{2/} Just as voluntary county programs that are subsequently mandated by the state become reimbursable, so the constitution supplanted the legislature's funding discretion and made reimbursement of these cases mandatory. The effect was the same as though the legislature had enacted a law in 1972, repealed it in 1974, and then enacted similar provisions in 1975. Even if the language of the 1975 law were the same as the 1972 version, it would now be a reimbursable mandate even if the older version (because of its date) were not. In short, the state may not pass a new law that is the same as or an addition to a pre-1973 code and, in so doing, absolve itself of financial responsibility. Thus, a break in the continuity of action - however brief or theoretical - creates a new law; and that is what the passage of Article XIII B did to the prior SB-90 process. (This fact appears to be conceded by the legislature in its Government Code Section 17552 segregation of mandates enacted after January 1, 1975, from older laws.)

Fifth, since Article XIII B was enacted by the voters, not the legislature, it cannot be stated that reimbursement of claiming costs was unintended. From the electorate's standpoint, payment of claiming costs could have been assumed to be part of this process. After all, taxpayers are familiar with the need to comply with state laws; and they also know that costs incurred in the preparation, for example, of income tax returns will be offset as a deduction. In addition, as found in Attachment E, the Legislative Analyst explained to the voters that "new programs or higher levels of services" meant that the state was required to pay for "local costs incurred as a result of state mandates" (underlining added); and claiming costs are definitely a result of each new mandate. Therefore, since these costs have not been specifically excluded in the language of Article XIII B nor in any of the mandate statutes, they should be reimbursed.

Sixth, the statutes listed as the basis for this test claim established new and added procedures not mandated before. The Controller points to Section 18.6 of Chapter 486, which espouses the legislature's intent that "the provision of Section 2207 as added to the Revenue and Taxation Code by this act are declaratory of existing law." However, this does not mean that this chapter was not a mandate. First, the legislature's declaration is self-serving and not conclusive. The question is not whether the legislature intended to create a mandate but rather whether it actually created one. The courts have found mandates even when the legislature claimed there were none.^{3/} Second, even if the declaration were accepted at face value, it applies only to Section 2207. That section merely defines "costs mandated by the state," it has nothing to do with the new procedures established for reimbursing that process. Contrary to the Controller's allegation, by not including any other sections in this disclaimer, the legislature actually affirmed that the new process was not part of the existing law. Third, the Legislative Counsel's analysis of Chapter 486 (AB 1375) specifically states that it changes existing law "by establishing a new procedure for local agencies to make claims for reimbursement against the state" (underlining added).

Mandatory Nature of the Claims Process

In language reminiscent of the death sentence appeals of Caryl Chessman, it has been alleged that claiming cost are the fault of the county. That is, if you don't want the costs, don't file the claims. We disagree with the contention that this is a voluntary process.

1. The reimbursement process is mandatory upon the state. Article XIII B uses the term "shall" when talking about the subvention of mandate funds. The only "permissive" instances relate to mandates enacted prior to January 1, 1975, and to the two other constitution exceptions that do not apply to this claim.
2. The language of the mandate statutes enacted after 1973 intend a mandatory process. For example, the Revenue and Taxation Code establishes when claims must be filed^{4/} and dictates financial penalties for delinquent claims.^{5/} It complicates the claiming process by requiring offsets for cost savings.^{6/} Indeed Section 2131(d) uses the mandatory "shall" language when talking about local agencies having to submit claims in the form required by Section 2218.5; and Section 2231 specifically states, "Claims for direct and indirect costs ... shall be filed in the manner prescribed by the State Controller." Similar language is found in the new

Government Code provisions; e.g., Section 17552 states that its chapter shall provide the sole and exclusive procedure by which a local agency ... may claim reimbursement for costs mandated by the state" Similarly, Section 17555 states that claims "shall be submitted in a form prescribed by the commission." (Underlining added).

3. If local agencies do not submit claims as required by legislature, they will not get paid; and if they are not paid, the law is no longer enforceable. In short, the burden of paying for mandates is entirely the responsibility of the state, and the constitution does not authorize the shifting of any part of the cost to the local agencies. Whatever procedures are dictated for that purpose must be paid for by the state. To argue otherwise is to endorse anarchy.

Miscellaneous Factors

1. Finance expressed concern that "clearly frivolous claims" might be submitted and paid for by the State if the claiming process were declared a mandate. This need not be the case. Even now the Commission's regulations stipulate that it may charge the costs of certain reviews to the unsuccessful requesting agency.^{7/} Also, in civil actions, it is the winning party that may recover its legal costs, not the loser.^{8/} Since these costs would not have been incurred but for the state's failure to voluntarily obey the law and since proceedings for cost recovery tend to be quasi-judicial in nature, the state should foot the bill when county allegations are affirmed.
2. Finance also states that administrative procedures are required to prevent a gift of public funds under Article XVI, Section 6. Again we have no objection to the state fulfilling its constitutional requirements, but nowhere in that section does it specify that claims must be submitted. Nor does it direct that the procedures that are developed must be paid for by anyone other than the state. Hence, the state may develop reasonable procedures for obeying the law, but it may not make local agencies pay for them.
3. Finance states that "there is no requirement that local entities submit claims to the CSM." This is clearly incorrect. Chapter 1459, through Government Code Section 17552, states that its chapter "shall provide the sole and exclusive procedure by which a local agency or school district may claim reimbursement for costs mandated by the state". The allegation that remedial legislation is an alternative is not only impractical, but it ignores the legislature's own directive.

4. The Department of Finance also implies in its response that since the state's procedures are "reasonable", there is no mandate. If reasonableness were a criteria, then one might conclude that unreasonable procedures would be reimbursable; and there are grounds for arguing that the current claiming maze is unreasonable. Fortunately, reasonableness is irrelevant to the mandate criteria; i.e., Article XIII B does not exempt reasonable mandates from its reimbursement directive. All mandate procedures must be reimbursed, whether reasonable or not.
5. Furthermore Department of Finance points to the new Apportionment System in defending the state's attempt to reduce the complexity and costs of the mandate reimbursement process. In so doing, however, it merely supports our contention that other means were available to provide the reimbursement required by Article XIII B. In short, the state selected the procedures which local agencies must follow and, therefore, the state must pay for the resulting costs.
6. Finance even describes the claiming process as merely "a mechanism for the orderly transfer of funds," one that allegedly does not involve any "programmatic change or increase." This assertion states a common mandate misconception, i.e., that the new program or higher level of service relates to the product being conferred on the ultimate recipient. In actuality, reimbursement is based on the action required by the provider (i.e., the local agency) regardless of whether any qualitative benefits result.

In this same regard, even if one were to assume that the claiming process were not a mandate in and of itself, the claiming requirement nevertheless merges with each new state-mandated program that goes into effect. As such, the claim laws become a catalyst mandating new costs and duties on local agencies. They are, in the words of Chapter 1459, one of the "costs incurred as a result of a mandate" (underlining added), which the law requires to be reimbursed as the "costs arising from a statute" mandating a new program or higher level of service.^{9/}

Conclusion

1. The mandate claiming process is a procedure selected by the state to fulfill both its legislative and constitutional requirements. Claiming costs are the direct result of the mandate system and, therefore, must be reimbursed to the local agencies.

2. The state is not excused from this obligation because of earlier laws. Not only does Chapter 1406/72 require the payment of claiming cost but subsequent changes produced new procedures mandating reimbursable activities from the claiming entities.
3. The claiming process is not voluntary. The state's requirements are mandated by the constitution. Similarly, the directives adopted by the legislature require local agencies to use only those claiming procedures developed by the State Controller and the Commission on State Mandates.

Declaration

I, Paul Robinson, a Senior Accountant for the Auditor-Controller/
Treasurer's Office, certify under penalty of perjury that the
foregoing is true and correct of my own knowledge, except as to
matters which are therein state as information and belief; and as
to those matters, I believe them to be true.



Signature

14 FEB 86
Date

Footnotes

1. See page C-2.
2. 68 Ops. Cal. Atty. Gen. 246.
3. See, for example, City of Sacramento v. State (App. 3 Dist. 1984) 203 Cal. Rpt. 258, 156 C.A. 3d 182.
4. Revenue and Taxation Code Section 2218.5.
5. Revenue and Taxation Code Section 2238.
6. Revenue and Taxation Code Section 2256.3.
7. See, for example, Section 1184.11(c) of the new regulations.
8. E.g., Code of Civil Procedure Section 1031.
9. Government Code Section 17610.

CHAPTER 1406, STATUTES OF 1972
SECTION 2164.3

2962

STATUTES OF CALIFORNIA

[Ch. 1406

(Ch. 1406]

1972 REGULAR SESSION

2963

Finance may request data from any government jurisdiction to be used to prepare the population estimate required by this section. The department may develop, or contract for the development of, additional information if, in the opinion of the department, such additional information may make an estimate feasible.

If any jurisdiction fails to supply the requested data, the Department of Finance is not required to provide an estimate for that jurisdiction, but may do so using the method deemed most appropriate by the Department of Finance.

2164. The state shall annually reimburse cities and counties for sales or use tax exemptions enacted into law after the effective date of this act. The reimbursement shall be made, when appropriated by the Legislature as follows:

(a) For each legislative bill which includes a sales or use tax exemption, the Director of Finance shall estimate the yearly net loss of revenue to local government due to the bill.

(b) Twenty percent of the local net loss shall be distributed to the counties in the same ratio as the total amount of sales and use taxes collected in each county is to the whole. This amount of money shall be used for the purposes specified in Chapter 1400 of the Statutes of the 1971 Regular Session.

(c) Eighty percent of the local net loss shall be distributed to cities, counties and cities and counties in the same ratio as the distribution of the cigarette tax money as specified in Section 30462 for cities, counties, and cities and counties.

(d) The distribution made under this section shall be made at the same time and in the same manner as such cigarette tax distributions.

(e) Any legislation which proposes a sales or use tax exemption but does not contain an appropriation as described in this section shall be null and void.

2164.3. (a) The state shall pay to each county, city and county, city and special district an amount to reimburse the county, city and county, city or special district for the full costs, which are mandated by acts enacted after January 1, 1973, of any new state-mandated program or any increased level of service of an existing mandated program.

(b) Any new state program or increased level of service of an existing mandated program, which is mandated by legislative action after January 1, 1973, shall include provisions within the bill which provide an amount sufficient to cover the total cost of the mandated program for all affected counties, cities and counties, cities, and special districts, as estimated by the Department of Finance. This amount shall be appropriated to the Controller for disbursement.

The Controller shall allocate the funds among counties, cities, cities and counties, and special districts for each mandated program based upon claims submitted within 45 days after the operative date of the mandate by the appropriate local government jurisdictions. Such claims shall be based on the appropriate local governmental jurisdiction's estimate of its cost for the mandated program for the

fiscal year. The Controller may review claims and may reduce those which appear to be excessive or unreasonable.

The allocations to the appropriate local jurisdictions shall be made by the Controller in accordance with the provisions of each bill which mandates additional cost.

(c) For subsequent fiscal years, with respect to the costs of any mandated costs as defined in subdivision (a), the Controller shall allocate funds to each appropriate local government jurisdiction to reimburse for such costs.

Claims shall be submitted by affected local governmental jurisdictions by October 31 and, after review and adjustments, shall be paid at the time or times provided in each bill which mandates additional cost.

The claims shall include the actual cost for the prior fiscal year and the estimated cost for the current fiscal year. The Controller may reduce any claim for the current fiscal year which appear to be excessive or unreasonable. The Controller shall adjust the payment for the current fiscal year to the local government to correct for the underpayment or overpayment of the estimated cost of the mandated cost in the prior fiscal year. The Controller may audit the records of any local government jurisdiction to verify the actual costs of state-mandated programs.

(d) The state shall pay to each county, city and county, city and special district, the full costs of a new program or increased level of service of an existing program mandated by any state executive regulation issued after January 1, 1973. The costs of any such executive regulation shall be estimated by the Department of Finance. Cities, cities and counties, counties, and special districts shall be reimbursed in the same manner as provided in subdivisions (b) and (c).

(e) "Increased level of service" means any requirement mandated by state law or executive regulation after January 1, 1973, which makes necessary expanded or additional costs to a county, city and county, city, or special district.

(f) If a city, city and county, county or special district has been providing a service or program at its option which is subsequently mandated by the state, the state shall pay such local governmental jurisdiction for such mandated service or program, and the local governmental program, and the local governmental jurisdiction shall reduce its property tax rate by the amount that the state payment replaces property tax revenues which were being expended on such service or program.

2164.5. Any funds received by a unit of local government pursuant to this chapter may be used for any local purpose of such unit and may, but need not necessarily, be used for purposes of general interest and benefit to the state.

OPINION OF PETER A. BALDRIDGE
ON THE REIMBURSABILITY OF CLAIMING COSTS

State of California

Kenneth Cory, State Controller

To : W. C. Chan

Date: January 7, 1986

Place:

From : Peter A. Baldridge

Subject: Claim Preparation and Holding Cell Costs -- Penal Code § 4700

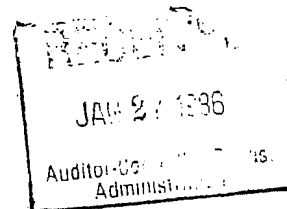
This memo responds to two opinion requests dated November 20, 1985, regarding reimbursement under Penal Code Sections 4700, 4700.2, 4700.5 and 6005.

You asked whether:

1. the cost of claim preparation performed by a consultant under contract is reimbursable and, if so, is reimbursement authorized to the extent that the amount claimed exceeds the cost that would have been incurred if county personnel performed the same function?
2. the cost of holding a state inmate in a courthouse "holding cell" during the proceeding is reimbursable and, if so, could the costs be determined in like manner as the "Daily Jail Rate"?

Section 4700, subsection(a), authorizes cities and counties in specified proceedings related to state prisoners to send to the Controller for reimbursement a statement of "all the costs incurred by the county or city . . . for the preparation of the trial, pretrial hearing, and actual trial of such case . . . [and] all guarding and keeping of such prisoner, while away from the prison . . ."

Subsections (c) and (e) of Section 4700 provide:



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January 7, 1986

"(c) The Controller shall reimburse the county or city for costs of prosecution based upon all operating costs of the county or city incurred in the prosecution of the case, including a proportional allowance for overhead . . ."

* * *

"(e) The cost of detention in a county or city correctional facility shall include the same cost factors as are utilized by the Department of Corrections in determining the cost of prisoner care in state correctional facilities." (Emphasis added.)

Sections 4700.2, 4700.5 and 6005 similarly authorize statements of all the costs incurred by the city or county where applicable. Unlike § 4700, however, none of these sections specifies what cost factors are to be utilized in determining the cost of detention. Of course, detention costs as they are commonly understood would not be incurred under § 4700.5.

This office has already concluded that the cost of preparing claims for reimbursement is also reimbursable under Section 4700 because of a long-standing administrative interpretation of that section by the Department of Corrections, which administered the program for forty years under substantially similar provisions. (See memo to W. C. Chan from Phil Bird, March 16, 1983.) In response to that memo, the State Controller's Office has allowed the cost of preparing claims under Sections 4700.2, 4700.5, and 6005 as well.

The question now is whether the same result would pertain where the claims are prepared by a consultant paid by the county under a contract as opposed to county personnel. In my view, it would. Claim preparation has long been treated as a direct cost under these programs. The counties or cities filing claims incur claim preparation expenses whether private consultants or public employees are used. They are entitled to be reimbursed for the direct costs they incur. Therefore, reimbursement for the cost incurred by the county for claim preparation by private consultants appears to be legally authorized.

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Further, it appears such reimbursement is authorized even if it exceeds what would be paid if the county utilized county personnel. Nothing in any of these sections creates any limit on reimbursement where private consultants are used. Of course, the Legislature could not have intended the term "all the costs incurred by the county or city" to require reimbursement of costs which are clearly excessive or unreasonable. Such an interpretation would lead to absurd results. Thus, there appears to be a basis for reducing such a reimbursement claim if the amount claimed is clearly unreasonable or excessive.

As for your second question, the cost of detaining a state inmate or ward in a courthouse holding cell is reimbursable. Sections 4700 and 6005 authorize reimbursement for the cost of "all guarding and keeping of such prisoner." Section 4700.2 authorizes reimbursement for all costs incurred by the sheriff for custody and other direct costs. Thus, if the county incurs a cost in detaining a prisoner at the courthouse or elsewhere, the cost is reimbursable.

You asked whether the rate of reimbursement may be determined in like manner to the "Daily Jail Rate." The "Daily Jail Rate" is a reimbursement rate derived by applying factors set forth in the "Daily Jail Rate Manual for Reimbursements under § 1776 of the Welfare and Institutions Code" (October, 1984), adopted by the Department of Corrections. The factors used to determine the rate are required by statute to be the same cost factors as are utilized by the Department of Corrections in determining the cost of prisoner care in state correctional facilities (Penal Code Section 4016.5; Welfare & Institutions Code Sec. 1776). Section 4700 also requires that these same factors be used when claiming reimbursement for the cost of detention under that section. Thus, it appears that the factors used to obtain the "Daily Jail Rate" may be applied in determining reimbursement under Sec. 4700 for "holding cell" detention.

Sections 4700.2 and 6005 do not expressly provide which factors are to be used in determining the costs of detention. Therefore, the choice appears to be an accounting matter. If the factors utilized in determining the Daily Jail Rate are indicative of the actual costs incurred by the county, then those factors may be applied. I should point out, however, that one of the factors in the Daily Jail Rate appears to be overhead. Neither Section 4700.2 nor Section 6005 appear to authorize reimbursement for indirect costs. Unlike Section 4700, they contain no provision for such reimbursement. Since reimbursement of overhead is expressly provided for in § 4700,

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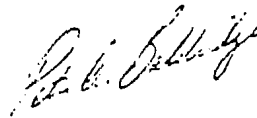
but not in the other sections, it appears the Legislature did not intend to authorize reimbursement of indirect costs under \$5 4700.2 and 6005.

One further question you posed, provided "holding cell" costs are reimbursable, is whether such costs should be deducted from the "Daily Jail Rate." This question appears to cover the situation in which the Daily Jail Rate is charged even though the prisoner is detained in the "holding cell" facility for a short time (e.g., 2 hours) for which a separate charge is levied. The Daily Jail Rate presumably is a daily rate covering a 24-hour period. The Daily Jail Rate Manual recognizes that prisoners are usually in custody only part of the first day and the last day of detention. Therefore, counties claiming under the programs covered by the manual may claim reimbursement for the first day only, unless claiming both can be justified. Similarly, a daily rate may not be appropriate where the prisoner is detained at separate facilities during a single day.

There appears to be no legal problem with calculating actual holding cell costs and then deducting that amount from the daily rate for detention at the jail on the same day to determine the proper amount of reimbursement, so long as this approach reimburses the county or city for its actual costs incurred. Whether such an approach is accurate in terms of accounting, however, is a question I am unable to address.

Please contact me if you have any questions.

PAB:df



ATTORNEY GENERAL'S OPINION NO. 85-502

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ATTORNEY GENERAL'S OPINIONS

[VOLUME 68]

It is a rule of statutory construction that *expressio unius est exclusio alterius* (the expression of one excludes the other). It may be argued that by prohibiting certain persons from serving on a county committee because of a potential conflict of loyalties, the Legislature has impliedly authorized all other persons to serve regardless of possible conflicts.

This rule of construction, however, has its own exceptions and "is inapplicable where its operation would contradict a discernible and contrary legislative intent" (*Wildlife Alive v. Chickering* (1976) 18 Cal. 3d 190, 195), "where its application could nullify the essence of the statute" (*County of Alameda v. State Bd. of Equalization* (1982) 131 Cal. App. 3d 374, 381), and "where no reason exists why persons or things other than those enumerated should not be included, and manifest injustice would follow by not including them" (*People v. Hacker Emporium, Inc.* (1971) 13 Cal. App. 3d 474, 477).

Here we believe that section 4007 serves to extend the common law rule against holding incompatible offices to situations where it would not otherwise apply; where the one position is a public office and the other is public employment.⁸ As previously mentioned, two "offices" must first be found to invoke the rule. Technically, then, section 4007 does not involve incompatibility of office. We thus do not view it as an attempt by the Legislature to abrogate the rule but rather to extend it to certain public employment.⁹ Moreover, we can find no basis for excluding current school board members from its prohibition.

In answer to the question presented, therefore, we conclude that a person may not simultaneously be a member of a county committee on school district organization and a member of a school district board of trustees located within the same county.

Opinion No. 85-502—September 11, 1985

SUBJECT: DISPOSITION BY COMMISSION ON STATE MANDATES OF CLAIM FOR "COSTS MANDATED BY THE STATE"—Regarding claims for "costs mandated by the state" filed with the Board of Control before January 1, 1985, and transferred to the Commission on State Mandates upon its establishment pursuant to Gov. C § 17630 and based upon a statute enacted after July 1, 1980, the Commission should determine if the claim is for "costs mandated by the state" as defined in Gov. C § 17514, and, if it is, allow it. If the claim does not meet the definition, the Commission should determine if it is for "costs mandated by the state" as defined in Rev. & Tax. C §§ 2207 or 2207.5, and, if it is, allow it. Or, if the

⁸A county superintendent of schools is a public employee for purposes of the incompatibility of office rule. (62 Ops. Cal. Atty. Gen. 611 (1979).)

⁹In *Childs v. Moss* (1942) 38 N.Y.S.2d 704, 707, the court stated: "On the issue of incompatibility, if the statute and the common law can stand together, the statute should not be construed as to abrogate the common law rule."

claim does not meet any of the foregoing definitions, the Commission should reject it.

Requested by: COMMISSION ON STATE MANDATES

Opinion by: JOHN K. VAN DE KAMP, Attorney General

Clayton P. Roche, Deputy

The Commission on State Mandates has requested an opinion on the following question:

What disposition should the Commission on State Mandates make with respect to the following type of claim for "costs mandated by the state":

(1) The claim was filed with the Board of Control before January 1, 1985 and transferred to the Commission upon its establishment pursuant to section 17630 of the Government Code; and

(2) The claim is based upon a statute which was enacted after July 1, 1980; the effective date of Article XIII B of the California Constitution.

CONCLUSION

As to such a claim, the Commission should:

(1) Determine if the claim is for "costs mandated by the state" as defined in section 17514 of the Government Code, which codifies the constitutional definition, and, if it is, allow it;

(2) If the claim does not meet that definition, then determine if it is for "costs mandated by the state" as defined in sections 2207 or 2207.5 of the Revenue and Taxation Code, and, if it is, allow it; or

(3) If the claim meets none of the foregoing definitions, then the claim should be rejected.

ANALYSIS

The Commission on State Mandates was established by the provisions of sections 17500-17630 of the Government Code on January 1, 1985. Its basic purpose is to adjudicate claims filed by local agencies for costs incurred by local agencies for costs mandated by the State under the provisions of article XIII B, section 6, of the California Constitution.¹

¹Article XIII B, section 6 provides:

"Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

- (a) Legislative mandates requested by the local agency affected.
- (b) Legislation defining a new crime or changing an existing definition of a crime; or
- (c) Legislative mandates enacted prior to January 1, 1973, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1973."

Before discussing in any detail the Commission on State Mandates (hereinafter "Commission"), a brief discussion of the evolution of state-mandated costs is appropriate. Such costs had their genesis in the Property Tax Relief Act of 1972 (Statutes of 1972, chapter 1406), more commonly known as "S.B. 90." By virtue of that Act, as amended from time to time, the ability of local agencies to levy taxes was severely limited. As a concomitant thereto, the Legislature provided that where the state imposed or mandated new or additional costs on local agencies, these agencies would be reimbursed by the state for such costs. These provisions, that is, the successor provisions to "S.B. 90," are contained in sections 2201 through 2327 of the Revenue and Taxation Code.

In 1979, the voters adopted article XIII B of the California Constitution. That article imposes both appropriation limits and spending limits upon the state government and all local governments. Accordingly, article XIII B was superimposed upon the existing "S.B. 90" legislation contained in the Revenue and Taxation Code. By virtue of section 6 thereof, set forth in footnote 1 above, the right of local agencies to be reimbursed for state-mandated costs was raised to constitutional proportions.

A comparison of the definition of state-mandated costs as between the "S.B. 90" legislation and the Constitution discloses that the constitutional definition (see fn. 1, *ante*) is narrower than the legislative definition found in the Revenue and Taxation Code. Accordingly, local agencies have had greater rights to reimbursement under the statutory law than under the constitution.²

²With respect to local agencies, section 2207 of the Revenue and Taxation Code provides:

"Costs mandated by the state" means any increased costs which a local agency is required to incur as a result of the following:

- (a) Any law enacted after January 1, 1973, which mandates a new program or an increased level of service of an existing program;
- (b) Any executive order issued after January 1, 1973, which mandates a new program;
- (c) Any executive order issued after January 1, 1973, which (i) implements or interprets a state statute and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973;
- (d) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which implements or interprets a federal statute or regulation and, by such implementation or interpretation, increases program or service levels required by such federal statute or regulation;
- (e) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which implements or interprets a statute or amendment adopted or enacted pursuant to the approval of a statewide ballot measure by the voters and, by such implementation or interpretation, increases program or service levels above the levels required by such ballot measure;
- (f) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which (i) removes an option previously available to local agencies and thereby increases program or service levels or (ii) prohibits a specific activity which results in the local agencies using a more costly alternative to provide a mandated program or service;
- (g) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which requires that an existing program or service be provided in a shorter time period and thereby increases the costs of such program or service;
- (h) Any statute enacted after January 1, 1973, or executive order issued after January 1, 1973, which adds new requirements to an existing optional program or service and thereby increases the cost of such program or service if the local agencies have no reasonable alternatives other than to continue the optional program."

See also section 2207.5 of the Revenue and Taxation Code for the somewhat similar provision as to school districts.

We are asked herein to determine the disposition the Commission should make as a claim for reimbursement of state-mandated costs based on a statute enacted after July 1, 1980 and filed with the Board of Control prior to January 1, 1985, the date the Commission was established.

We conclude that as to such a claim, the Commission should:

(1) Determine if the claim is for "costs mandated by the state" as defined in section 17514 of the Government Code, which codifies the constitutional definition, and if it is, allow it;³

(2) If the claim does not meet that definition, then determine if it is for "costs mandated by the state" as defined in sections 2207 or 2207.5 of the Revenue and Taxation Code, and, if it is, allow it; or

(3) If the claim meets none of the foregoing definitions, then the claim should be rejected.

An examination of the powers and duties of the Commission demonstrates that, *at least as to prospective claims*, the Commission's power to allow claims is limited to claims (1) which arise under the constitutional definition (Gov. Code, section 17514) (2) which arise under statutes enacted before January 1, 1975.

Thus, section 17551 of the Government Code provides:

"(a) The Commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution.

"(b) The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district filed on and after January 1, 1985, that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state, as defined in section 2207 or 2207.5 of the Revenue and Taxation Code, pursuant to a statute enacted, or an executive order implementing a statute enacted, before January 1, 1975."

and section 17552 of the Government Code provides:

"This chapter shall provide the sole and exclusive procedure by which a local agency or school district may claim reimbursement for costs mandated

³Section 17514 of the Government Code provides:

"Costs mandated by the state means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of section 6 of Article XIII B of the California Constitution."

See also *City of Sacramento v. State of California* (1984) 156 Cal. App. 3d 182, which interpreted Article XIII B, section 6 to require reimbursement for costs incurred after July 1, 1980 based upon state statutes enacted or adopted during the "window period," that is, January 1, 1975 through July 1, 1980.

by the state as required by section 6 of Article XIII B of the California Constitution or for costs mandated by the state, as defined in Section 2207 or 2207.5 of the Revenue and Taxation Code, pursuant to a statute enacted, or an executive order implementing a statute enacted, before January 1, 1975."

And finally, subdivision (b) of section 17556 provides with respect to findings on state-mandated costs as defined in sections 2207 and 2207.5 of the Revenue and Taxation Code:

"(b) The commission may find costs mandated by the state, as defined in Section 2207 or 2207.5 of the Revenue and Taxation Code, solely with regard to a statute enacted, or an executive order implementing a statute enacted, before January 1, 1975. However, such a finding shall not constitute costs mandated by the state as defined in Section 17514."

Accordingly, the new law is clear as to which claims the Commission may allow at least *prospectively*. Claims with respect to mandates which do not meet the constitutional definition (Gov. Code, § 17514) or which were not based upon a statute enacted before January 1, 1975, are excluded.

Section 17630 of the new law then sets forth its operative date. It additionally provides for the transfer of *all* pending claims for reimbursement from the Board of Control to the Commission. It states:

"The provisions of this part shall be applicable to claims for state reimbursement of costs mandated by the state on and after January 1, 1985. All claims for state reimbursement filed under Article I (commencing with section 2201), Article 2 (commencing with section 2225), Article 3 (commencing with section 2240), Article 3.5 (commencing with section 2250) and Article 3.6 (commencing with Section 2256) of Chapter 3 of Part 4 of Division 1 of the Revenue and Taxation Code which have not been included in a local government claims bill pursuant to Section 2255 of the Revenue and Taxation Code enacted before January 1, 1985, shall be transferred to and considered by the commission pursuant to the provisions of this part." (Emphasis added.)

It is thus seen that section 17630 of the Government Code provides that claims which were transferred to the Commission are to be considered "pursuant to the provisions of this part," that is pursuant to the provisions of the new law. Taken literally, that could possibly mean that the Commission would have to disallow a claim

⁴The references in the second sentence to the various articles of the Revenue and Taxation Code encompass all the provisions under which a claim might have been filed. Accordingly, it is not necessary to examine that code to determine if claims filed under some other article have been excluded from the section.

Furthermore, it is our understanding that for our purposes herein claims "which have not been included in a local government claims bill pursuant to section 2255 of the Revenue and Taxation Code enacted before January 1, 1985" merely means claims which were still undecided by the Board of Control on January 1, 1985 and, accordingly, have not been approved and referred to the Legislature for funding. In short, it is our understanding that no issue is presented as to what is to be considered as included or not included within a local governmental claims bill once the Board of Control has made its determination.

which was based upon a statute enacted after July 1, 1980 out-of-hand unless the claim meets the criteria of section 17514, that is the constitutional criteria. In short, nothing in the new law itself appears to permit the Commission to apply the definitions in sections 2207 or 2207.5 of the Revenue and Taxation Code to such a claim.

In our view, however, this possible construction which arises from reading the second sentence of section 17630 of the Government Code is refuted by the provisions of section 2239 of the Revenue and Taxation Code. That section was part of the same statute which established the Commission (Stats. 1984, ch. 1459) and was clearly intended as the complementary provision to section 17630. It provides:

"(a) Except as provided in subdivision (b), the provisions of Article 1 (commencing with Section 2201), Article 2 (commencing with Section 2225), Article 3 (commencing with Section 2240), Article 3.5 (commencing with Section 2250), and Article 3.6 (commencing with Section 2256) of this chapter relating to state reimbursement to local agencies and school districts shall be applicable to costs mandated by the state before July 1, 1980.

"(b) All claims for state reimbursement which have not been included in a local government claims bill pursuant to Section 2255 enacted before January 1, 1985, shall be transferred to and considered by the Commission on State Mandates as claims filed pursuant to subdivision (b) of Section 17551 of the Government Code." (Emphasis added).

It is seen that subdivision (a) would continue and make applicable the definitions in sections 2207 and 2207.5 of the Revenue and Taxation Code to pre-article XIII B claims, except as provided in subdivision (b).

Subdivision (b) then transfers all claims which were pending before the Board of Control on January 1, 1985 and provides that the Commission should consider them as claims filed pursuant to subdivision (b) of section 17551 of the Government Code.

It is to be recalled that subdivision (b) of section 17551 of the Government Code, when read in conjunction with section 17556, subdivision (b), permits the Commission to allow claims if they are for costs "mandated by the state, as defined in sections 2207 or 2207.5 of the Revenue and Taxation Code, pursuant to a statute enacted, or an executive order implementing a statute enacted, before January 1, 1975." Thus, although all transferred claims would not actually meet that criteria, subdivision (b) states that they are still to be considered as if they all did. This being so, all such claims may be allowed if they in fact relate to state-mandated costs. Of necessity, the definitions provided in the Revenue and Taxation Code would have to apply in order to qualify those claims which neither met the definitions set forth in section 17514 of the Government Code, nor were based upon pre-1975 statutes.

In short, we believe section 2239, subdivision (b) of the Revenue and Taxation Code evidences a legislative intent that no pre-1985 claims are to be outlawed if they were in fact based upon state mandates. Otherwise, subdivision (b) would be superfluous and meaningless.

Accordingly, it is concluded that as to a claim for reimbursement of state-

mandated costs based on a statute enacted after July 1, 1980 and filed with the Board of Control prior to January 1, 1985, the Commission should determine if the claim meets either the definition found in section 17514 of the Government Code or the definitions found in sections 2207 or 2207.5 of the Revenue and Taxation Code. If it does, the Commission should allow the claim. If it does not, the claim should be rejected.

Opinion No. 85-208—September 17, 1985

**SUBJECT: DUTY OF REGISTERED ENGINEER TO INFORM IDENTIFI-
FABLE POTENTIAL VICTIMS OF DETERMINATION OF IMMINENT
RISK OF SERIOUS INJURY**—A registered engineer retained to investi-
gate the integrity of a building who determines, based on structural
deficiencies in violation of applicable building standards, that there is an
imminent risk of serious injury to the occupants thereof has a duty to warn
the identifiable occupants or an appropriate authority of such determina-
tions.

Requested by: MEMBER, CALIFORNIA SENATE

Opinion by: JOHN K. VAN DE KAMP, Attorney General

Anthony S. De Vigo, Deputy

The Honorable Leroy F. Greene, Member of the State Senate, has requested an
opinion on the following question:

Does a registered engineer retained to investigate the integrity of a building who
determines, based on structural deficiencies in violation of applicable building
standards, that there is an imminent risk of serious injury to the occupants thereof, and
who is advised by the owner that no disclosure or remedial action is intended and that
such determinations are to remain confidential, have a duty to warn the occupants or to
notify the local building officials of such determinations?

CONCLUSION

A registered engineer retained to investigate the integrity of a building who
determines, based on structural deficiencies in violation of applicable building
standards, that there is an imminent risk of serious injury to the occupants thereof, and
who is advised by the owner that no disclosure or remedial action is intended and that
such determinations are to remain confidential, has a duty to warn the identifiable
occupants or, if not feasible, to notify the local building officials or other appropriate
authority of such determinations.

ANALYSIS

A registered civil or structural engineer may be privately retained on occasional
instances to investigate the integrity of a structure. The examination might reveal such

4

Limitation of Government Appropriations —
Initiative Constitutional Amendment

Official Title and Summary Prepared by the Attorney General

LIMITATION OF GOVERNMENT APPROPRIATIONS. INITIATIVE CONSTITUTIONAL AMENDMENT. Establishes and defines annual appropriation limits on state and local governmental entities based on annual appropriations for prior fiscal year. Requires adjustments for changes in cost of living, population and other specified factors. Appropriation limits may be established or temporarily changed by electorate. Requires revenues received in excess of appropriations permitted by this measure to be returned by revision of tax rates or fee schedules within two fiscal years next following year excess created. With exceptions, provides for reimbursement of local governments for new programs or higher level of services mandated by state. Financial impact: Indeterminable. Financial impact of this measure will depend upon future actions of state and local governments with regard to appropriations that are not subject to the limitations of this measure.

Analysis by Legislative Analyst

Background:

The Constitution places no limitation on the amount which may be appropriated for expenditure by the state or local governments (including school districts), provided sufficient revenues are available to finance these expenditures. Nor does the Constitution limit the amount by which appropriations in one year may exceed appropriations in the prior year.

Proposal:

This ballot measure would amend the Constitution to:

- Limit the growth in appropriations made by the state and individual local governments. Generally, the measure would limit the rate of growth in appropriations to the percentage increase in the cost of living and the percentage increase in the state or local government's population.
- Establish the general requirement that state and local governments return to the taxpayers moneys collected or on hand that exceed the amount appropriated for a given fiscal year.
- Require the state to reimburse local governments for the cost of complying with "state mandates." "State mandates" are requirements imposed on local governments by legislation or executive orders.

The appropriation limits would become effective in the 1980-81 fiscal year, which begins on July 1, 1980, and ends on June 30, 1981. These limits would only apply to appropriations financed from the "proceeds of taxes," which the initiative defines as:

- All tax revenues (we are advised by Legislative Counsel that this would include those tax revenues carried over from prior years);
- Any proceeds from the investment of tax revenues; and
- Any revenues from a regulatory license fee, user charge or user fee that exceed the amount needed to cover the reasonable cost of providing the regulation, product or service.

The initiative would not restrict the growth in appropriations financed from other sources of revenue, including federal funds, bond funds, traffic fines, user fees based on reasonable costs, and income from gifts.

The *appropriation limit for the state government* in fiscal year 1980-81 would be equal to the sum of all appropriations initially available for expenditure during the period July 1, 1978-June 30, 1979, that were financed from the "proceeds of taxes," less amounts specifically excluded by the measure (discussed below), with the remainder adjusted for changes in the cost of living and population. The appropriations limit for each succeeding year would be equal to the limit for the prior year, adjusted for changes in the cost of living and population. Thus, even if the state appropriations in a given year were held below the level permitted by this ballot measure, the appropriation limit for the following year would not be any lower as a result. The limit would still be based on the limit for the prior year, and not on the actual level of appropriations for that year.

The following types of appropriations would *not* be subject to the state limit:

- (1) State financial assistance to local governments—that is, any state funds which are distributed to local governments other than funds provided to reimburse these governments for state mandates;
- (2) Payments to beneficiaries from retirement, disability insurance and unemployment insurance funds;
- (3) Payments for interest and redemption charges on state debt existing on January 1, 1979, or payments on voter-approved *bonded* debt incurred after that date;
- (4) Appropriations needed to pay the state's cost of complying with mandates imposed by federal laws and regulations or court orders.

We estimate that the state appropriated approxi-

Continued on page 20

Source: California Ballot Pamphlet, Special Statewide Election, November 6, 1979.

mately \$7.9 billion from the "proceeds of taxes" in fiscal year 1978-79, after taking into account the exclusions listed above. This amount, referred to as "appropriations subject to limitation," represents approximately 40 percent of *total* General Fund and special fund appropriations made for that fiscal year. The main reason why the state's appropriation limit covers less than half of the state's total expenditures is that a large proportion of total state expenditures represents funds passed on to local governments for a variety of public purposes. Under this ballot measure, these funds would be subject to the limits on local, rather than state, appropriations.

The *appropriation limit for a local government* in fiscal year 1980-81 would be equal to the sum of all appropriations initially available for expenditure during the period of July 1, 1978-June 30, 1979, that were financed from the "proceeds of taxes," *plus* state financial assistance received in that year, *less* amounts specifically excluded by the measure (discussed below), with the remainder adjusted for changes in the cost of living and population. The appropriations limit in each subsequent year would be equal to the limit for the prior year, adjusted for changes in the cost of living and population. For each school district, "population" is defined in this measure as the district's average daily attendance.

The following types of appropriations would not be subject to the local limit:

- (1) Refunds of taxes;
- (2) Appropriations required for payment of local costs incurred as a result of state mandates. (The initiative requires the state to reimburse local governments for such costs, and the appropriation of such funds would be subject to limitation at the state level.);
- (3) Payments for interest and redemption charges on debt existing on or before January 1, 1979, or payments on voter-approved *bonded* debt incurred after that date;
- (4) Appropriations required to pay the local government's cost of complying with mandates imposed by federal laws and regulations or court orders.

Furthermore, any special district which was in existence on July 1, 1978, and which had a 1977-78 fiscal year property tax rate of 12½ cents per \$100 of assessed value or less, would never be subject to a limit on appropriations. Special districts which do not receive any funding from the "proceeds of taxes" would also be exempt from the limits.

Under the initiative, the limit on state or local government appropriations could be changed in one of four ways:

- (1) An appropriation limit *may* be changed temporarily if a majority of voters in the jurisdiction approve the change. Such a change could be made for one, two, three, or four years, but it could *not* be effective for more than four years

unless a majority of the voters again voted to change the limit.

- (2) In the event of an emergency, an appropriation limit *may* be exceeded for a single year by the governing body of a local government without voter approval. However, if the governing body provides for an emergency increase, the appropriation limits in the following three years would have to be reduced by an amount sufficient to recoup the excess appropriations. The initiative does not place any restrictions upon the types of circumstances which may be declared to constitute an emergency.
- (3) If the financial responsibility for providing a program or service is transferred from one entity of government to another *government* entity, the appropriation limits of both entities *must* be adjusted by a reasonable amount that is mutually agreed upon. Any increase in one entity's limit would have to be offset by an equal decrease in the other entity's limit.
- (4) If an entity of government transfers the financial responsibility for providing a program or service from itself to a *private* entity, or the source of funds used to support an existing program or service is shifted from the "proceeds of taxes" to regulatory license fees, user charges or use fees, the entity's appropriation limit *must* be decreased accordingly.

If, in any fiscal year, an entity of government were to receive or have on hand revenues in excess of the amount that it appropriates for that year, it would be required to return the excess to taxpayers within the next two fiscal years. The initiative specifies that these funds are to be returned by lowering tax rates or fee schedules. In addition, Legislative Counsel has advised us that direct refunds of taxes paid would also be permitted under the measure.

Because certain types of appropriations would not be directly subject to the limitations established by this ballot measure, it would be possible for the state or a local government with excess funds to spend these funds in the exempt categories rather than return the funds to the taxpayers. For example, the state could appropriate any excess revenues for additional financial assistance to local governments, because such assistance is excluded from the limit on state appropriations. (This, in turn, might result in the return of excess revenues to local taxpayers if a local government were unable to spend these funds within its limit.) Similarly, a local government with an unfunded liability in its retirement system could appropriate its excess revenues to reduce the liability, as such an appropriation would be considered a payment toward a legal "indebtedness" under this ballot measure.

Finally, the initiative would establish a requirement that the state provide funds to reimburse local agencies

for the cost of complying with state mandates. The initiative specifies that the Legislature need not provide such reimbursements for mandates enacted or adopted prior to January 1, 1975, but does not require explicitly that reimbursement be provided for mandates enacted or adopted after that date. Legislative Counsel advises us that under this measure the state would only be required to provide reimbursements for costs incurred as a result of mandates enacted or adopted after July 1, 1980.

Fiscal Impact:

This proposition is primarily intended to limit the rate of growth in state and local spending by imposing a limit on certain categories of state and local appropriations. As noted above, approximately 60 percent of current state expenditures would be excluded from the limit on state appropriations, although nearly all of these expenditures would be subject to limitation at the local level. Also, some unknown percentage of local government expenditures would not be subject to the limits on either state or local appropriations. Thus, the fiscal impact of this ballot measure would depend on two factors:

- (1) What the rate of growth in state and local "appropriations subject to limitation" would be, in the absence of this limitation; and
- (2) The extent to which any reductions in "appropriations subject to limitation" required by the measure are offset by increases in those appropriations not subject to limitation.

Impact on State Government. During six of the past ten years, total state spending has increased more rapidly than the cost of living and population. Thus, it is likely that, had this measure been in effect during those years, it would have caused "appropriations subject to limitation" to be less than they actually were.

It is not possible to predict with any accuracy the future rate of growth in state "appropriations subject to limitation." Thus it is not possible to estimate with any reliability what effect the measure, if approved, would have on such appropriations in the future. However, based on the best information now available (July 1979), we estimate that passage of the initiative would cause state "appropriations subject to limitation" in fiscal year 1980-81 to be modestly lower than they probably would be if the initiative were not approved. This assumes that state reimbursement would only be required for state mandates enacted or adopted after July 1, 1980. If the courts ruled that reimbursement was re-

quired for mandates enacted or adopted after January 1, 1975, the impact of the measure on "appropriations subject to limitation" would be substantial. This is because the state would be required to provide significant reimbursements to local governments within this limitation. We have no basis for predicting the impact in subsequent years.

Whether this would result in a reduction in total state spending would depend on whether the state decided to use the funds that could not be spent under the limitation for (1) additional financial assistance to local governments (or for some other category of appropriations excluded from the limit), or (2) state tax relief. Thus, the effect of this ballot measure on state spending in 1980-81 could range from no change to a modest reduction.

Impact on Local Governments. Existing data do not permit us to make reliable estimates of either the appropriation limits that local governments would face in fiscal year 1980-81 if this ballot measure were approved, or what these governments would spend in that fiscal year if the initiative were not approved. Nonetheless, we estimate that those school districts experiencing significant declines in enrollment would have to reduce "appropriations subject to limitation" significantly below what these appropriations would be otherwise. We also estimate that most cities and counties, at least initially, would not be required to reduce the growth in these categories of appropriations by any significant amounts. However, some local governments, especially those with stable or declining populations, could be subject to more significant restrictions on their "appropriations subject to limitation."

Whether any reductions in "appropriations subject to limitation" caused by this measure would result in corresponding reductions in total local government expenditures and a return of excess revenues to the taxpayers would depend on whether increased spending resulted in those categories not subject to limitation. We have no basis for estimating the actions of local governments in this regard.

Conclusion. Thus, while a reduction in the rate of growth in state or local government expenditures may result from this ballot measure in fiscal year 1980-81, there may be instances in which no reduction in the rate of growth in an individual government's spending occurs. The impact of this measure in subsequent years cannot be estimated, although the measure could cause government spending to be significantly lower than it would be otherwise.